

Bliain Á Chur Ina Cheart
Years Putting It Right

Oifig an Ombudsman
Office of the Ombudsman

INDEPENDENT

IMPARTIAL

FREE

Annual
Report
2013

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Annual Report 2013

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Report to both Houses of the Oireachtas

I hereby submit the Annual Report of the Office of the Ombudsman to the Dáil and Seanad pursuant to the provisions of Section 6(7) of the Ombudsman Act 1980. This is the 30th Annual Report submitted in relation to the work of the Office of the Ombudsman since it was established in 1984.

A handwritten signature in black ink, which appears to read "Peter Tyndall". The signature is written in a cursive style.

Peter Tyndall
Ombudsman
May 2014



Bernadette McNally
Director General



CHAPTER 1

Introduction from
the Ombudsman

Chapter 1: Introduction from the Ombudsman

1.1 Introduction from the Ombudsman

I am very pleased to introduce this Annual Report for 2013. I took on the role of Ombudsman in December 2013 from my distinguished predecessor, Emily O'Reilly following her election as European Ombudsman which she commenced in October. Most of the activity covered in the report was undertaken under Emily's stewardship and I want to pay tribute to her for her outstanding contribution to the Office during her ten years as Ombudsman.

I would also like to place on record my thanks to Bernadette McNally, Director General, and the staff of the Office for their work during the year and for their able stewardship between Emily's move to her new role and me taking up my post. Even with the changes, it was a very successful year and I look forward to building on the Office's achievements to date.

In opening the report, it is also very apposite to note that this marks the thirtieth year of the Office and one in which it was considerably strengthened by the Ombudsman Amendment Act (2012). I was appointed by President Higgins as the fourth Ombudsman for Ireland and I have considered below some of the achievements of my predecessors.

I am the first Ombudsman to take on the role having previously worked elsewhere as Ombudsman. I was Public Services Ombudsman for Wales from 2007. The role of Ombudsman is consequently familiar to me but there are important differences between the roles and particularly, between the public service landscapes. I have benefitted from being originally from Ireland, and having some familiarity with the Office. I followed Emily in serving a two year term as Chair of the Ombudsman Association (whose membership includes most Ombudsmen in Ireland and the United Kingdom) and was active in the networks linking public services Ombudsmen. I am currently the President of the European Region of the International Ombudsman Institute and I am grateful to the staff of this Office for their work in taking on the Secretariat.

2013 saw significant performance improvements in managing complaints which are set out here, and I believe that we can build on these to deliver even more prompt performance in the future. The changes to structures and processes which have enabled staff to deliver the improved performance will be reviewed during the year and further enhancements will be introduced where possible. It is important to note that the improvements in performance and output were achieved when staffing levels were necessarily reduced because of the impact of public expenditure cuts affecting all public bodies. I am conscious also that improved performance must not be at the expense of quality, and further measures to ensure that quality and consistency are maintained and improved will also be introduced.

I am conscious that the relations between the Office and some of the bodies in jurisdiction have been very difficult in the past. I have therefore been engaging with key bodies in jurisdiction to ensure that there is effective communication to ensure effective co-operation in the future. This will hopefully enable speedier resolution of complaints and the improvement of services in response to problems identified during our investigations.

I have been highly impressed by the achievements of the Irish Office and hope to build on these by introducing innovations developed during my time in Wales and further developments of practice here. Among the new measures planned for the coming year will be the publication of a quarterly digest of cases designed to maximise learning from complaints.

1.2 Previous Ombudsmen

2014 marks 30 years of the Office of the Ombudsman in Ireland. In its thirty years I believe that the Office has developed an enviable reputation, both nationally and internationally, for doing what Ombudsmen the world over do – highlighting failings and putting things right. During my term of Office I plan to build on its successful track record to continue to put things right for individuals while driving improvement in our public services. The excellent reputation of the Office has been built through the hard work and professional attitude of its staff, led over the last thirty years by my three predecessors.

The late Michael Mills was appointed by the President as the first Ombudsman in January 1984. He was a widely respected political journalist who had the challenge of setting up the Office and establishing its independence and impartiality from scratch. Often commended for his integrity, Michael was known for his strong views and was always prepared to fight for justice. Michael spent 10 years as Ombudsman and, sadly, passed away in 2008.

Kevin Murphy succeeded Michael as Ombudsman in 1994. Kevin's familiarity with public administration and knowledge of how it worked; together with an ability to listen – and the ability to sense when the plausible just was not true or was deliberately incomplete, made him a formidable Ombudsman.

Building on the work of Michael Mills, Kevin encouraged public bodies to establish internal complaints systems and he produced guidelines for public bodies on good administration.

In 1998, Kevin was also appointed Ireland's first Information Commissioner, responsible for dealing with appeals of decisions made by public bodies on Freedom of Information requests. Under Kevin's stewardship the Office produced clear, comprehensive, well-argued decisions that not only stood up to legal challenge in the Courts but to scrutiny from academics and public bodies. Kevin used the introduction of the radical new FOI Act to promote and foster an attitude of openness among public bodies. Kevin retired as Ombudsman and Information Commissioner in 2003 and, sadly, passed away in 2012 after a lifetime of service to the public.

My immediate predecessor, Emily O'Reilly, was, like Michael Mills, an accomplished journalist. She was also an author and broadcaster. Apart from taking on the roles of Ombudsman and Information Commissioner, Emily was appointed Ireland's first Commissioner for Environmental Information. Later in her term she oversaw the merger of the Commission for Public Service Appointments with her Office.

During her 10 year term, Emily instigated many high profile investigations. For example, her 'Who Cares?' report in 2010, detailed her investigation into the actions of the Department of Health and Children and of the HSE, regarding the right to long-term nursing home care for older people. The Ombudsman found that there was a failure by the HSE to provide for older people in public nursing homes.

There were some difficult times during Emily's tenure with the economic downturn resulting in cuts to the resources of the Office, at one stage seeing a 16% reduction in staffing. The reduced staff had to deal with rising complaint numbers with a record number of complaints received in 2010. In response, Emily oversaw a major change in processes within the Office that resulted in a significant increase in the volume of complaints dealt with despite the reduction in resources.

During 2012, the Ombudsman (Amendment) Act was enacted having being initially proposed as far back as 1987. The Ombudsman Amendment Act marked a major step forward in the development of the Office. It saw an extension of our remit to cover the administrative actions of around 200 additional 'reviewable agencies' which are now subject to examination by the Ombudsman. Emily's high reputation at home and abroad was reflected in her appointment as European Ombudsman last year.

1.3 The Future

I want now to look forward to a number of areas where I believe there is potential for improvement. These include the extension the Ombudsman's jurisdiction to include public services provided by private bodies and in particular, the opportunities offered by the European directive on alternative dispute resolution; the benefits of adopting a standardised approach to complaint handling across the public sector; the development of a single portal for complaints, and the benefits of affording the Office constitutional status.

In April 2013 the European Council adopted two key legislative measures regarding dispute resolution. One was a directive on alternative dispute resolution (ADR) and the second related to online dispute resolution (ODR). The aim of both was to offer consumers fast and cost-effective means to resolve disputes with businesses. I consider this matter in more detail in Chapter 2 as I believe it offers an opportunity for Ireland to ensure that it has a public services ombudsman, and not a public sector ombudsman. With so many services being provided by private companies or bodies in the independent sector, we have an increasingly complex public service landscape, but I believe we can and should have simplified access to redress regardless of who the service provider is. I believe it is also important to reconsider those aspects of publicly provided services which are not in my jurisdiction and consider further extensions in the future.

Often, complaints considered by my Office about the services provided by public bodies have been compounded by very poor complaint handling. People face delays, a lack of information, incomplete answers, defensive attitudes and no effective redress. Widely varying approaches to complaint handling abound, with no obvious rationale for the differences.

Introducing a standard approach to complaint handling across the public sector, setting out clear timescales, standards for responses, a common approach to redress and above all, a focus on tackling most dissatisfaction at the time it arises, can bring real dividends. I want to work with Government and public service providers to introduce a model complaints policy to be used across all public services in Ireland. This has the potential to lead to greatly improved complaint handling. It means that a single investigation can address complaints across multiple providers. It allows for standardised complaint training for staff of all public service providers. It gives complainants certainty about what they should expect. A model system would be streamlined and based on an "Investigate Once, Investigate Well" approach. It would eliminate multiple stage processes which create work and delay resolution.

Making it easy for people to complain is essential if we are to improve public services. I want people to be told as soon as they complain to any public service provider about their right to complain to the Ombudsman if they remain dissatisfied. I want them to be able to complain in a way which they find convenient, in a language they are comfortable with and in a medium which suits them, whether that is in a letter; filling in a form by hand or on-line; on the phone or in person. As social media, smart phones and tablets are now common; we need

to facilitate their use in contacting the Office, while not neglecting the interests of those who prefer more traditional means. A standardised public sector complaint process would also make it easier for the agencies within jurisdiction with no need to re-invent the wheel and ready access to validated training modules, for example.

The complex pattern of public service delivery can also serve to confuse people who want to complain. They are not always sure where they should go and how they should make a complaint. If you take the case of Irish Water as an example, they have contracted local authorities to undertake work on their behalf, such as fitting water meters, and they in turn use contractors. If a contractor damages the gas supply while fitting the meter, as happened in a recent case brought to my Office, who should you complain to?

One way to address this confusion is to provide a single portal for all public sector complaints. The website www.healthcomplaints.ie which was developed by my Office in partnership with other bodies is a useful building block towards a telephone and online service which can signpost people who want to make a complaint about any public service, or capture that complaint and send it on their behalf. Already, my Office signposts many complainants to the appropriate agency or Ombudsman. Extending this service would cost money, and would need to be funded, but it is an idea we plan to develop for the future.

Finally, recent events have highlighted the importance of Ombudsman institutions being accountable to the Oireachtas. One way to secure this would be for the Ombudsman to become a constitutional Office, in the same way as the Comptroller and Auditor General. At the moment, the Ombudsman is appointed by the President on the recommendation of the Oireachtas and has access to the Public Service Oversight and Petitions Committee.

Public confidence in oversight institutions is enhanced when they are clearly independent of the bodies in their jurisdiction. Constitutional status would serve to reinforce the independence and offer a further reassurance to members of the public that their complaint will be dealt with properly on its merits, and that the people making disputed decisions will not themselves be able to dictate or influence the outcome.

1.4 Additional 200 public bodies now under the Ombudsman's remit

When the Office was established in 1984 around 40 public bodies (consisting of Government Departments and other public bodies) came under the scrutiny of an Ombudsman for the first time. In 1985 local authorities and what were then the health boards came under our remit, and in 2007 the voluntary hospitals came under remit. Not since then has there been a significant expansion of the Ombudsman's remit. However, as a result of the Ombudsman (Amendment) Act, nearly 200 additional public bodies came under the Office's remit from 1 May 2013. An indicative list of those bodies is published on my Office's website - www.ombudsman.ie and at Annex B to this report. I can examine complaints against those bodies in relation to actions which occurred on or after 1 May 2013. Between May and December 2013, I received 150 complaints against these new bodies. It is too early to predict with any degree of certainty the full extent of the increase in complaints my Office will experience as a result of the extension of the remit. In Chapter 2, I provide details of the pattern of complaints received against these 'new' bodies.

"I found the service from the office first class. I would not have got my refund without the intervention of your office. I would like to take this opportunity to thank everyone involved"

A Complainant

1.5 Oireachtas Committee on Public Service Oversight and Petitions

My predecessor Emily O'Reilly repeatedly stressed the importance she attached to the role of the Joint Oireachtas Committee on Public Service Oversight and Petitions (PSOP) as a forum for honest and open debate on issues relating to public administration in Ireland highlighted by the Ombudsman. I very much concur with her view and I propose to maintain my Office's high level of engagement with PSOP.

I was pleased to appear before the Committee on 23 October 2013 to discuss my nomination as Ombudsman and Information Commissioner. I welcomed the wide ranging discussion with members on a number of topics including the role of the Ombudsman and my vision for the Office.

1.6 Staffing matters

I wish to acknowledge the continued commitment of both the current team in the Office and all who have worked in the Office over the last thirty years. They have shown their willingness to adapt to and meet all the challenges presented to them over the years.

2013 saw a number of new staff join the Ombudsman's team and some depart. David Glynn and Noel Whelan both retired from the Office, while Denise Freeman moved on to pastures new. I want to thank them for the contributions they made in 2013 as well as in the years prior to their departure and to wish them well in the future.

During 2013 we were joined by Eoin Dinan, Deirdre Morgan, Claire Kelly and Carla Barry. I am delighted to welcome them to the Office and look forward to working with them in the years ahead.



Ombudsman Peter Tyndall pictured at his appointment at Áras an Uachtaráin with President Michael D. Higgins and Minister for Public Expenditure and Reform, Brendan Howlin.



CHAPTER 2

Business Review
of 2013

Chapter 2: Business Review of 2013

2.1 Role of the Ombudsman

As Ombudsman my main role is to examine complaints from people who feel they have been unfairly treated by certain public bodies, for example, government departments, local authorities and the HSE. As of 1 May 2013 I can also examine complaints against a number of other public bodies including publicly-funded third level education institutions such as universities and education training boards.

My Office provides a free public service. We examine complaints in a fair, independent and impartial way. Before bringing a complaint to my Office the person who has been adversely affected must have tried to resolve the complaint with the public body complained about. When considering complaints we will consider if the action complained about, for example, a decision or failure to act was made:

- without proper authority
- on irrelevant grounds
- in a negligent or careless manner
- based on wrong or incomplete information
- in a way that discriminated against you
- based on bad administrative practice or
- in a way that did not demonstrate fair or sound administration.

In practice, most complaints are resolved informally after my Office has brought the complaint to the attention of the public body concerned.

If I uphold a complaint I will recommend appropriate redress. The main approach I will take when recommending redress is, where possible, to put the complainant (or the person who has suffered the injustice) back to the position they would have been had the injustice not occurred. If the issue is a systemic one, I will also make recommendations which aim to reduce the likelihood of others being similarly affected in the future. While my recommendations are not binding on the public body, they are accepted in the vast majority of cases.

30 years ago: Department of Posts and Telegraphs becomes An Post and Telecom Eireann.

I am appointed by the President and report to the Oireachtas, and not to any particular Minister of the Government.

As Ombudsman I can also examine complaints under the Disability Act 2005. These complaints relate to access to information and services by people with disabilities. I report on complaints under the Disability Act later in this Chapter.

2.2 Overview of statistics

In 2013, the total number of complaints received by my Office was 3,190 as compared to 3,412 in 2012. This is a decrease of 6.5% which was itself a decrease of 5.3% over the 2011 figure of 3,602, but is still considerably higher than the average for the previous 10 years (2,774). In 2013, 58% of cases were closed within 3 months and 90% were closed within 12 months. Before complainants bring complaints to my Office they must take “reasonable steps” to resolve their complaint with the public body concerned. In a number of cases (1,390 in 2013) my Office provided advice and assistance to those who made their complaint ‘prematurely’ to my Office and usually redirected them back to the local service, inviting them to revert to us if the case was not resolved at that level.

Excluding these ‘premature’ complaints, it remains the case that the Civil Service which includes the Department of Social Protection is the largest source of complaints (at 46.5% compared to 46.8% in 2012), followed by Local Authorities (27.5% compared to 30.4%) and the HSE (17.3% compared to 21.1%). In 2013, 16.4% of cases were fully or partially upheld, assistance was provided in 24.7% of cases, 45.1% were not upheld and 13.7% were either discontinued or withdrawn.

Of the 839 complaints made against the Civil Service, 491 were against the Department of Social Protection, 203 against the Department of Agriculture, Food and the Marine, and 68 against the Revenue Commissioners. 54 of the 495 Local Authority complaints were against Dublin City Council, 36 against Cork County Council and 36 against Galway County Council. 77 of the 310 complaints against the HSE were against hospitals with the remainder spread among the four HSE regions.

2.3 Complaints made against ‘new’ public bodies in 2013

I referred in my introduction to the fact that a number of new bodies came under my remit in May 2013.

In December 2012 the Office contacted nearly 200 public bodies that were to come within the Ombudsman’s remit. We offered the Office’s assistance and guidance to help these new bodies prepare to comply with Ombudsman legislation, to explain the Ombudsman’s role

and to allow discussion on a future working relationship. A series of seminars was held in February 2013 for all the new bodies aimed at explaining the provisions of the Ombudsman Acts and highlighting the importance of a good internal complaint handling system. Also, in 2013, the Office published 'Six Rules for Getting it Right - The Ombudsman's Guide to Good Public Administration' and 'Listen, Respond, Learn, Improve - The Ombudsman's guide to setting up and operating an internal complaints system'. I hope these guides prove useful not only to these new public bodies, but the public bodies already within my remit. Within my Office a number of staff have been given the additional responsibility of liaising with these bodies and developing relationships with them. I hope that these preparations will not only benefit these public bodies but ensure that members of the public benefit through the raising of standards of public administration and complaint handling.

In 2013 my Office received a total of 150 valid complaints relating to 38 of those new bodies. 105 were in connection with the education sector, 24 related to complaints against regulatory bodies e.g. the Health and Safety Authority, the Law Society, the National Transport Authority, and 21 related to other bodies e.g. Courts Service, Údarás na Gaeltachta. In the vast majority of cases the total number of complaints against individual bodies was in single digit figures. The exceptions were Student Universal Support Ireland (SUSI) with 69 complaints, and the Private Residential Tenancies Board (PRTB) with 11 complaints.

The PRTB is one of those new bodies which does not fall fully within my remit in that I can only examine complaints in relation to its actions taken in connection with the registration of tenancies. The vast majority of the complaints I received were about disputes regarding the imposition of statutory penalties due to the submission of late registration applications.

SUSI was established under the Student Support Act 2011 to administer a new centralised system to process certain third level student grant applications. It has to deal with very large volumes of applications annually under severe time constraints. Many of the complaints I received in 2013 related to appeal decisions made after 1 May 2013 arising from the 2012/2013 academic year. SUSI has faced considerable administrative challenges and has made a number of welcome amendments to its processes and procedures for handling its 2013/2014 applications. My Office has worked closely with SUSI to assist it in refining its processes and procedures. Complaints which came to my Office were useful in identifying some of the areas where improvements should be made.

I must say that to date I am entirely satisfied with the levels of cooperation my Office has received from the new public bodies under remit.

30 years ago: Dunnes Stores workers in Henry Street refuse to handle South African goods.

2.4 Enquiries

Our Enquiries Unit is our 'front of house' unit that screens all complaints, responds to all enquiries and meets visitors to the Office. In 2013 the unit provided assistance in 1,445 complaints we received against bodies outside our remit e.g. An Garda Síochána, ESB. The complainants were advised of the correct way to proceed with their complaint and the appropriate body to contact.

Staff of the unit also dealt with 8,218 telephone calls and met 273 personal callers during 2013.

2.5 Provisions of the Ombudsman (Amendment) Act

The Ombudsman (Amendment) Act was signed into law in 2012. The provisions of the Act were described in detail in the 2012 Annual Report. However, as the Amendment Act is now a full calendar year in operation it is useful to summarise the main provisions here:

Nearly 200 additional public bodies now subject to the Ombudsman's remit

From 1 May 2013, I can examine the administrative actions of an additional 200 or so, public bodies. These include:

- all publicly-funded third level education institutions, such as universities, institutes of technology, education training boards (formerly VECs) and other bodies in the education sector such as Student Universal Support Ireland (SUSI)
- regulatory bodies such as the Health Information and Quality Authority (HIQA), the Law Society of Ireland and the National Transport Authority, and
- other bodies such as FÁS and the National Treatment Purchase Fund.

A list of these additional bodies is set out at Annex B to this report and on my website www.ombudsman.ie.

A duty on public bodies to provide assistance and guidance

Where an action taken by or on behalf of a public body affects certain rights, privileges, obligations or liabilities, there is now a duty on public bodies within the Ombudsman's remit to:

- give "reasonable assistance and guidance" to the public in their dealings with the public body "having particular regard to the needs of the person as a result of any disability"
- ensure that members of the public are dealt with properly, fairly, impartially and in a timely manner
- provide information to the public on any rights of appeal or review in respect of the action and on any time limits applying to the exercise of those rights. This includes a legal requirement to advise complainants of their right to refer a matter to the Ombudsman.

Reference of questions of law to the High Court

The Amendment Act also provides that the Ombudsman may refer any question of law arising in an investigation to the High Court for determination. There have sometimes been cases where the interpretation of a particular provision in legislation is unclear or where the interpretation given by the public body differs from that of the Ombudsman. This provision allows the Ombudsman to seek clarification on questions of law from the High Court where it is considered necessary to do so.

The Ombudsman can seek a court order to compel the provision of information to him

Under section 7 of the Ombudsman Act 1980 the Ombudsman has the power to require anyone who has information or documents relevant to an investigation to provide that information or document to him, or require that person to appear before him. Prior to the Amendment Act, if a person refused to comply with such a requirement, the Ombudsman had no powers of compliance. The Ombudsman can now apply to the Circuit Court for an order directing that person to comply with the Ombudsman's requirement.

I report on the use of section 7 notices later in this Chapter. I also report on the first time I have had to apply to the Circuit Court for such an order.

The Ombudsman can make recommendations to public bodies generally

Following an investigation of a complaint against a public body, the Ombudsman will make a finding. If the complaint is upheld the Ombudsman may make a recommendation to that public body aimed at rectifying the maladministration that occurred. Prior to the Amendment Act the Ombudsman had the power to make recommendations only to the public body which was the subject of the investigation. Under the Amendment Act the Ombudsman can now make recommendations, following an investigation, in general terms to those public bodies that the Ombudsman considers appropriate. This means that where the Ombudsman finds maladministration in one particular body, and considers that it would be beneficial for other public bodies to also act on those recommendations, the Ombudsman can make a recommendation to those other public bodies.

2.6 Section 7 Notices - Failures to cooperate with the Ombudsman

Section 7 of the Ombudsman Act 1980 (as amended) confers very significant powers on the Ombudsman in terms of acquiring documents and information necessary for the examination or investigation of complaints. Under the Act, there is a legal obligation placed on "any person who, in the opinion of the Ombudsman, is in possession of information, or has a document or thing in his power or control, that is relevant to the examination or investigation" to provide that material to the Ombudsman.

Furthermore, the Ombudsman is empowered to require such a person to attend before him “and the person shall comply with the requirements”.

In almost every case the information I need is provided to my Office without the necessity to issue a section 7 notice. My Annual Report is used to publish the number of occasions where I have issued a section 7 notice.

During 2013 my Office was required to issue four section 7 notices. Two notices related to complaints against the HSE. After issuing the section 7 notices I am pleased to report that the records were received.

The remaining two notices related to complaints I received in relation to what is called the ‘Drogheda Review’ and which is described below. One of these notices issued to the Department of Health. I set out below the reasons the Department did not supply the records sought and my subsequent application to the Circuit Court to gain access to the records. The other notice issued to an individual who had information which I required to examine the complaints and which was received after the section 7 notice issued.

Year	Number of Section 7 notices Issued
2013	4
2012	7
2011	5
2010	8
2009	8

2.7 Application to the court to gain access to records: ‘Drogheda Review’ complaints

In 2013, the Office used its powers under the Ombudsman (Amendment) Act to apply to the Circuit Court for an order directing compliance with section 7.

The application was made to seek records relating to what is known as the ‘Drogheda Review’. In January 2010 the Department of Health established a review to examine and recommend to the Minister for Health whether a further investigation into the procedures and practices operating at Our Lady of Lourdes Hospital in Drogheda during the period 1964 to 1995 to protect patients from sexual abuse while undergoing treatment or care at the hospital and to deal with allegations of sexual abuse against a member of its staff, would be likely to provide additional information to improve present best practice guidelines and policies which apply to the treatment of patients in hospital for the purpose of protecting such patients from being sexually abused.

The review was conducted by a retired Judge of the High (Commercial) Court. My Office received 29 complaints about the way the review was handled. The vast majority of the complainants had been interviewed during the review process. As part of the preliminary examination of the complaints, the Ombudsman sought relevant records from the Department, including copies of the transcripts of the interviews. Despite lengthy correspondence with the Department and the retired Judge, and meetings with senior officials of the Department, including the Secretary General, the Department refused to provide the records to the Ombudsman. A range of reasons were advanced for the refusal, including a suggestion that the Department did not have ownership and control over the records, that they were received from the retired Judge on confidential grounds and that the review did not relate to “administrative actions”.

Following the extensive efforts to get access to the records with no success, My Office decided to seek an order of the court to gain access. At the time of writing, the proceedings had not concluded.

2.8 Complaints under the Disability Act 2005

The Disability Act, 2005, which came into law on 8 July 2005, imposes significant obligations on Government Departments and on public bodies to work proactively towards the improvement of the quality of life of people with disabilities. It also gave the Ombudsman new powers to investigate complaints about compliance by public bodies and others with Part 3 of the Act. A complaint can be made to the Ombudsman regarding a public body’s failure to comply with the Disability Act. Specifically the Ombudsman may investigate complaints about access by people with disabilities to public buildings, services and information.

As in previous years, the relatively low number of complaints received under the Disability Act 2005 is disappointing. It is vitally important that people with a disability are informed as to their rights on access to services and information and that they are aware of their right of recourse to me as Ombudsman to examine their unresolved complaints.

It is also crucial that both professional and non-professional people involved in the disability sector are knowledgeable about the Disability Act 2005 and the Ombudsman’s remit.

Disability Act - examinable complaints received in 2013			
	Brought forward from 2012	Complaints received in 2013	On Hands for 2013
Access to Information (S.28)	1	1	2
Access to Services (S.26)	2	1	3
Accessibility of Services Provided to Public Body (S.27)	0	1	1
Complaints Handling (S.38 to S.39)	0	2	2
Miscellaneous	0	1	1
Total	3	6	9

2.9 Bringing the Ombudsman service to the regions

Visits to Citizens Information Centres (CICs)

Most of our complaints are received by letter, by e mail and through telephone calls but sometimes people want to talk to us in person. Members of the public are welcome at our office in 18 Lower Leeson Street, Dublin 2.

To improve access to people living outside of Dublin, staff from my Office visit CICs to take complaints from members of the public. Monthly visits to Cork, Limerick and Galway continue to provide a valuable local service, easily accessible to people living there. During 2013, Ombudsman staff were available on 35 occasions to provide advice and assistance and to take complaints on behalf of the public.

Limerick CIC in 2013

51 valid complaints were received.

Galway CIC in 2013

76 valid complaints were received.

Cork CIC in 2013

85 valid complaints were received.

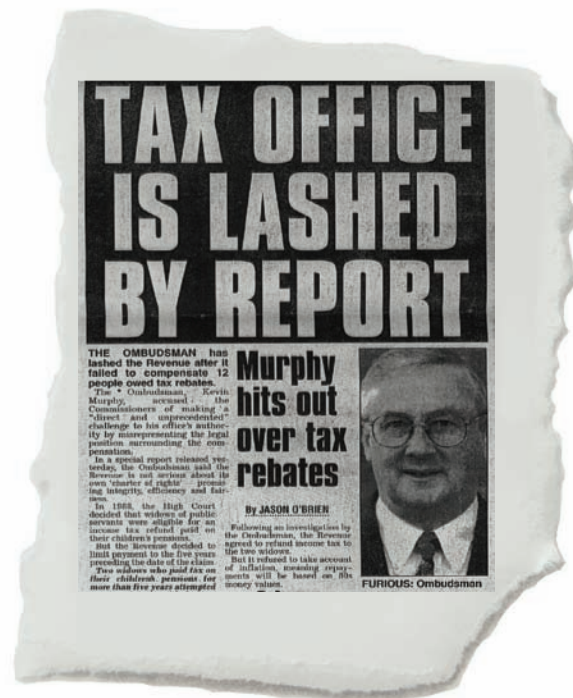
Our visits to the CICs also gave us the opportunity to provide assistance to 177 people whose cases were not within our remit or where they had not taken the matter up with the public body in the first instance.

Regional Visit to Dundalk

We completed our first visit to the Louth area for a number of years. We dealt with 29 people and received six valid complaints. As was the case with the CICs, we provided assistance to many others where the case was outside our remit.

Cork Adult Education & Training Exhibition

The Office was represented at this three day exhibition in September. Attendance at this exhibition has been extremely useful in promoting the role and function of the Office in the southern region.



2002

Dublin over 50's Show RDS

The Office returned to this show after a few years absence. This is a popular event attracting approximately 22,000 people over the three days. Staff members were present to answer questions about the role of the Office and to provide advice and assistance.

I would like to thank all those involved in our Outreach programme during 2013. As ever, my staff continue to bring our service directly to the people in a courteous and professional manner.

2.10 European Ombudsman Network Conference, Dublin September 2013

In September 2013, Emily O'Reilly, former Ombudsman and outgoing European Ombudsman, Professor Nikiforos Diamandouros, co-hosted the 9th National Seminar of the European Network of Ombudsmen in Dublin. Forty National Ombudsmen from across Europe met in Dublin Castle for this biannual event to exchange ideas and experiences on promoting best practice among European Ombudsmen.

The seminar focussed on good administration and the rights of the citizen. Among the topics discussed were 'Innovation in Ombudsman Offices' and 'Making the Citizen Count'. The seminar was opened by Minister of State at the Department of Public Expenditure and Reform, Mr Brian Hayes. The Minister remarked on the important role played by oversight bodies such as National Ombudsmen in holding Governments and Ministers to account and, in doing so, promoting public confidence in state institutions.

The seminar heard that the need for an Ombudsman is even more acute during straitened times. Speakers recognised that Governments must reflect fiscal realities and make difficult choices on how and where limited funds are allocated. They acknowledged that certain services and benefits have either to be abolished or reduced. The seminar noted that the role of the Ombudsman is to make sure that changes to schemes are implemented in a fair and equitable way and any anomalies that occur are highlighted. While citizens understand why certain cuts may have to be made, they will correctly object if they see that such reductions are implemented in an apparently unfair and arbitrary way.

This seminar provided an opportunity for National Ombudsmen to keep abreast of developments in different jurisdictions, to avail of the networking opportunities such gatherings provide so that knowledge and experience is shared but also to reaffirm the core values that are common to all Ombudsmen.

Delegates were particularly honoured that President Michael D Higgins marked the occasion by hosting them at a reception in Áras an Uachtaráin.

2.11 Constitutional status for the Office of the Ombudsman

My predecessor, Emily O'Reilly, often called for constitutional status for the Office of the Ombudsman. As far back as 1996, the Constitutional Review Group said:

"Independence is the foundation stone upon which the Office of the Ombudsman is based. The Ombudsman must be able to operate without being influenced by Government action. It is not enough for him or her to be independent in fact - he or she must also be seen as such by those who use the Office. A constitutional guarantee for this independence would reinforce freedom from conflict of interest, from deference to the executive, from influence by special interest groups, and it would support the freedom to assemble facts and reach independent and impartial conclusions".

Other oversight bodies in Ireland such as the Comptroller and Auditor General have constitutional recognition. Constitutional status would serve to ensure that administrative accountability is given the same recognition and is regarded as being as important as financial accountability. Constitutional status would also increase public confidence in the independence of the Office of the Ombudsman. In 2013 the Office made a submission to the Convention on the Constitution calling for constitutional status for the Office. The submission is available on my website.

2.12 The Ombudsman Association

The Ombudsman Association (formerly the British and Irish Ombudsman Association) is a professional association which promotes the concept of 'the Ombudsman'. Its membership mainly consists of Ombudsman and complaint handling bodies from Ireland, the United Kingdom and territories related to the UK. The Association organises networking and educational opportunities for complaint handling bodies.

I had the honour of chairing the Ombudsman Association between 2010 and 2012. My predecessor, Emily O'Reilly also chaired the Association between 2008 and 2010. Members both learn from, and provide assistance to, fellow complaint handlers and our discussions and exchanges of ideas raise the standards by which we operate. We aim to raise standards of 'Ombudsmanship' and ultimately provide a better service to the public.

In May 2013 the Association held its biennial conference in Loughborough University, England. Among the topics discussed at the conference and during various workshops were: 'Accessibility – a strategic approach to managing the challenges', 'Appropriate dispute resolution forums and legal challenges', 'Ombudsmen – the next 20 years', and 'Human Rights and the Ombudsman', while Emily O'Reilly presented on 'Managing Change'. Further information on the Association and on the conference discussions is available by contacting the Association at www.ombudsmanassociation.org.

2.13 Emily O'Reilly appointed European Ombudsman

The most significant event for the Office occurred on 3 July 2013 when Emily O'Reilly was elected as European Ombudsman by a majority of the European Parliament. Six candidates from across Europe, including three MEPs, were in the running for the position. Emily was formally appointed as European Ombudsman on 1 October 2013. The European Ombudsman is an independent body that investigates complaints about maladministration in EU institutions, bodies, offices, and agencies. It was a proud moment for the Office of the Ombudsman when Emily was elected and although she will be greatly missed at home, I have no doubt that she will have a significant positive impact on the administration of the European Union. Further information on the European Ombudsman is available from www.ombudsman.europa.eu.



Outgoing European Ombudsman Prof. Nikiforos Diamandouros with incoming European Ombudsman Emily O'Reilly.

30 years ago: Apple Computer Inc unveils its revolutionary Macintosh personal computer.

2.14 New Irish Ombudsman

The election of Emily O'Reilly as European Ombudsman meant that a new Irish Ombudsman would have to be appointed. I was delighted and honoured to be appointed Ireland's Ombudsman and Information Commissioner on 2 December 2013 by President Michael D. Higgins.

As Ombudsman I also serve as an ex-officio member of the Standards in Public Office Commission, the Office of the Commission for Public Service Appointments, the Referendum Commission and the Constituency Commission.

2.15 Submission on the Open Government Action Plan

In December 2012, the Minister for Public Expenditure and Reform, Brendan Howlin, announced Ireland's intention to explore and implement Open Government in his Budget Day speech. The Minister plans a broad and wide-ranging engagement process with civil society to develop proposals for Ireland's first Open Government Action Plan.

In December 2013, I made a detailed submission to the Minister on suggestions for possible inclusion in the Government's Action Plan. I warmly welcome the initiative and the development of the plan is an opportunity for all public servants to play their part in making concrete commitments towards the promotion of transparency, towards engagement with the public, towards efforts to combat corruption, and towards harnessing new technologies to strengthen governance.

I set out twenty suggestions under the four broad themes of Accountability and Fairness, Integrity, Citizen Engagement and Transparency. The full submission is available on my website.

2.16 EU Alternative Dispute Resolution (ADR) Directive

The ADR Directive imposes a requirement on EU member states to offer effective access to ADR services for resolving contractual disputes between consumers and businesses concerning the sale of products and services. The new arrangements will need to be in place by the middle of 2015. ADR entities will have to meet certain quality criteria, i.e. be well-qualified, impartial, transparent, effective and fair.

Over the years many services formerly in the public sector have been privatised – including, for example, energy suppliers and telecoms. These often fall into the category of networked services.

While all services are provided by the state, there is little issue about access to redress. However, when services are privatised, then access to redress can be lost. This has recently happened in the case of Irish Water, where water services were formerly within jurisdiction when provided by local authorities. The removal of jurisdiction occurred without consultation with the Office and is a matter of considerable concern.

The changes in the way public services are delivered has had a variable effect on access to redress. Some companies, such as eircom, provide services that were once within the jurisdiction of the Ombudsman, but no longer are. Under the EU ADR directive, all of the networked services, including post, electricity, gas, public transport, and telecoms will need to have access to an ADR entity. I believe they should come within the jurisdiction of the Ombudsman, to offer a one stop shop approach to redress for public services.

The Ombudsman's Office would then cover a mixture of state, independent and private bodies, a so-called hybrid model. However, this would not be an entirely new development as many services already under jurisdiction are provided by independent or private bodies on behalf of the State or local authorities while the new provision to draw in significantly funded bodies will introduce many more, so the template is already in place. However, a more fully evolved hybrid model would need to see changes in the way the Office of the Ombudsman operates.

At the moment, I make recommendations and do not have binding powers. My Office is funded from the public purse, rather than by bodies in my jurisdiction. Private Sector Ombudsmen (such as the Financial Services Ombudsman) can be established by law and organisations in their jurisdiction can be required in law to co-operate with them. One important distinction from public services ombudsmen is that although such schemes can be created by statute, their funding is usually provided by the industry sector in which they operate, and not by the State.

In a hybrid model, it is likely that binding powers would be needed in respect of private providers, who would be less susceptible to the democratic process and criticism by the Oireachtas. Funding would also need to come from the industry, whether through a levy, a charge per case, or a combination of both. The cost should not fall to the public purse. The cost can act as an incentive to get things right in the first place – the so-called “polluter pays” principle.

Such hybrid ombudsman schemes operate successfully in Australia and elsewhere, and Ireland now has an opportunity to follow their example. It is the job of the State to ensure that citizens have access to public services. It is also widely accepted that citizens should have access to independent redress in the shape of ombudsmen. Growing complexity in service provision should be counterbalanced by simplicity in accessing redress.

2.17 Strategic Plan 2013-2015

Over the past year we have begun implementation of our three year Strategic Plan. The plan sets out how we will seek to improve standards of public administration and promote the principles of openness, transparency, accountability and effectiveness. The progress we have made in implementing the plan to date has shown the high calibre and commitment of staff in my Office and across the public service generally to the highest standards of public service despite the challenges posed by ongoing resource constraints.

The main focus of the plan is the provision of a high quality and timely service to members of the public who seek our assistance. The key objectives of the plan are detailed below:



Comprehensive, annual business plans set out the detailed actions required to meet the high level objectives. We are satisfied that we are making significant progress in delivering on this challenging programme. The extension of the remit of my Office provided an opportunity to develop a more proactive approach to stakeholder engagement. This included information seminars, resource tools, an online forum and designated staff to support the new sectors which came within my remit on 1 May 2013. This process has facilitated earlier resolution of complaints and a greater shared purpose between my Office and the bodies within my remit to tackle the root causes of complaints. I intend to continue this approach over the coming year and will use the publication of a quarterly casebook to share learning from complaints examined.

Internally we have put in place practices to regularly review our work and to improve efficiency which have yielded improvements in a number of areas including faster completion times for case examinations. In addition, we have strengthened our quality assurance processes to ensure that our work is consistently of the highest standard. We are confident that the measures we are implementing will ensure that we deliver the quality of service that members of the public expect and that our staff can be proud of.

The work of my Office in seeking to improve standards of public administration is dependent on an organisation that is strong and independent. The need for public confidence in the independence of oversight bodies, such as my Office, has been highlighted over the past year. I have made the case for constitutional status for my Office to safeguard its independence to the Convention on the Constitution. I also sought an enhanced role for my Office in public service transparency and accountability and protection of the public interest in my submission on Open Government.

To date, we have scored well against the key measures of success that we set ourselves. As the Office celebrates its 30th anniversary in 2014 we will strive to deliver on our plan to ensure that the Office continues to promote the highest standards of public administration for all our citizens.

"I thought that the Office of the Ombudsman coming to Clonmel was an excellent service. Even though my contact was not familiar with my area of concern they were confident and listened to our case and explained the process very thoroughly. Thank you from very satisfied customers"

A Complainant

30 years ago: South African prisoner Nelson Mandela sees his wife for first time in 22 years.



CHAPTER 3

Investigations

Chapter 3: Investigations

3.1 Mobility Allowance and Motorised Transport Grant Schemes - Update

The 2012 Annual Report outlined the background to the decision of the Department of Health to discontinue the Mobility Allowance (MA) and Motorised Transport Grant (MTG) schemes to new applicants. This decision was made after the publication of special reports by the then Ombudsman Emily O'Reilly which indicated that the schemes were in breach of the Equal Status Act 2000. The Ombudsman appeared before the Public Service Oversight and Petitions Committee (PSOP) on 6 December 2012 to discuss the matter. The Committee held separate hearings with the Minister for Health, the Secretary General of the Department and other senior officials on 6 February 2013. On 6 March 2013 the Committee again met with the Secretary General and some of his senior officials to discuss the closure of the schemes.

On 11 June 2013 the Government announced that new statutory provisions would be introduced in relation to financial supports for disabled persons with mobility needs. The Government established an inter-departmental group, chaired by the Department of the Taoiseach, to develop proposals for a new scheme.

In November 2013 the Government decided that the detailed preparatory work required for a new travel subsidy scheme and associated statutory provisions should be progressed by the Minister for Health, in consultation with other relevant Ministers. The outcome of that work is awaited. I very much hope that this work will be concluded as soon as possible.

I also understand that PSOP plans to report in due course to the Dáil, as provided for in its Standing Orders, on the outcome of its various deliberations on the matter. I look forward to reading that report.

During 2013, the Office published reports of two investigations which are of particular interest.

3.2 Care Denied: Failure to provide long-stay care for under 65s

In May 2013 my Office concluded an investigation into two complaints relating to nursing home residents who were denied refunds of fees, under the Health Repayment Scheme (HRS), on the basis that they were patients in private nursing homes. This was despite the fact that they were forced to arrange for private care, as public care facilities were refused to them. The Health Service Executive (HSE) deemed that their nursing home fees were not refundable under the HRS as they were resident in private nursing homes, and the HRS Appeals Officer also refused their appeals on the same basis. Both of the patients involved were medical card holders.

The investigation revealed that one of the patients had been forced to enter a private nursing home following a brain tumour at the age of 57. The relevant health board had refused to arrange a public nursing home place for her because she was under 65. The second patient suffered a stroke at the age of 53, and was also forced to enter private nursing home care at that point, as the health board in that instance also refused public nursing home facilities to her on the basis of her age. In fact, neither patient should have been liable for nursing home fees, as medical card holders.

The investigation found that both patients had been discriminated against on age grounds and recommended the payment of €38,000 to the first complainant and €130,000 to the second complainant. The HSE accepted these recommendations.

3.3 Appeal Overruled: A failure to provide basic income for a family seeking asylum

In June 2013 the Ombudsman published her report – ‘Appeal Overruled: A failure to provide basic income for a family seeking asylum’ following her investigation into the failure of the Health Service Executive (HSE) to implement a decision of the Social Welfare Appeals Office to award Supplementary Welfare Allowance to a woman who sought asylum here. The Ombudsman found that the HSE “had no proper basis for its actions and that the failure caused significant adverse consequences over an extended period for the woman and her two daughters”. The Ombudsman also found that the failure to implement the Appeals Office’s decision had a negative impact on the efforts to re-unite the family which were being made by the HSE’s Child Protection Service. Following the intervention of the Ombudsman, the HSE agreed to pay arrears of €11,882 to the woman and an additional ‘time and trouble’ payment of €3,000. The HSE also apologised to the woman.

Background

In March 2010 a woman complained to the Ombudsman about the rate of Supplementary Welfare Allowance (SWA) paid to her by the Health Service Executive (HSE). She believed that the decision (made in December 2009) by the Appeals Officer was to grant her the full weekly rate of SWA of €197.80 for herself and €24.00 per week for her daughter. Following the Appeals Officer's decision, however, the HSE paid her €19.10 for herself and €9.60 for her daughter. Attempts to resolve the matter with the HSE were unsuccessful.

SWA consists of a basic payment and/or a supplement to cover certain expenses a person may not be able to meet. The main purpose of the allowance is to guarantee a standard basic minimum income.

The complainant had come to Ireland in 2007 with her two daughters as an asylum seeker. They were then placed in what is known as "Direct Provision" accommodation operated by the Reception and Integration Agency which is part of the Department of Justice and Equality. Direct Provision provides food and shelter to asylum seekers while their claims for refugee/ other status are being processed. They are also paid weekly allowances of €19.10 per adult and €9.60 per child.

In August 2008 the family's circumstances changed. They left the Direct Provision hostel in the west of Ireland to stay with a friend in Dublin. This was because one of the complainant's daughters was experiencing a serious deterioration in her mental health and conditions in her Direct Provision hostel were unsatisfactory in these circumstances. The 15-year-old girl was subsequently hospitalised following a suicide attempt and, after discharge from hospital, was placed in foster care on a voluntary basis. Her mother applied for SWA in November 2008. The application was refused. She appealed the decision to the HSE, was again refused and then appealed to the Social Welfare Appeals Office.

The Appeals Officer allowed the appeal following an oral hearing and issued a detailed statement on her decision which had regard to the exceptional medical and social circumstances of the case. However, the relevant Superintendent Community Welfare Officer (who administered the SWA scheme) queried the outcome. Despite the responses from the Appeals Officer confirming her decision, and despite the fact that the complainant was not living in Direct Provision accommodation, he decided to pay her at the rate of €19.10 per week for herself and €9.60 per week for the daughter then living with her, which was the rate payable to asylum seekers in Direct Provision.

The HSE corrected its position only following the intervention of my Office. The Appeals Officer's decision was finally implemented in January 2011 when an arrears payment of €11,882 was paid to the complainant, 13 months after the success of her appeal.

20 years ago: First session of the Forum for Peace and Reconciliation takes place in Dublin Castle.

Investigation

It is quite rare that a decision of an Appeals Officer would not be implemented in full and without delay. In law, the decisions of an Appeals Officer are “final and conclusive”. There is a procedure for querying appeal decisions (which does not allow for the withholding of payments while a decision is being queried) but it was not followed in this case. The failure to implement an Appeals Officer’s decision over a long period of time prompted my Office to initiate a formal investigation.

An obvious consequence was extreme impoverishment for both the complainant and her eldest daughter. Another, far-reaching consequence was that the failure to provide the family with an income meant it was not possible for the girl in foster care, to be re-united with her family. This was an outcome which the HSE social workers involved in the girl’s care had anticipated as a result of the Appeals Officer’s decision to award the full-rate SWA. The failure to implement the Appeals Officer’s decision, and the emotional and financial instability for the family which resulted from that failure, upset these plans.

Outcome

Having carried out an investigation, the Ombudsman found:

- that the Community Welfare Service of the HSE (acting for the Department of Social Protection) failed to implement correctly a decision of a Social Welfare Appeals Officer; that there was no proper basis for this failure; and that the failure caused significant adverse consequences, over an extended period, for the family;
- that, in particular, the failure to implement the Appeals Officer’s decision impacted negatively on the efforts to reunite the family being made by the HSE Child Protection Service;
- that this failure reflects actions which were taken without proper authority, were improperly discriminatory as well as being otherwise contrary to fair or sound administration.

The Department of Social Protection responded that, in the light of my report, it had asked the HSE to write to the complainant to convey its apologies for what had happened. The Department explained that it had asked the HSE to convey this apology because it was the “responsible body” at the time the claim was made. The Department had, since that time, taken over the operation of the SWA scheme. Subsequently, the HSE sent a letter of apology to her.

In view of the significant adverse consequences suffered by this family the Ombudsman recommended to the Department of Social Protection that it make a “time and trouble” payment to the complainant of €3,000.

This recommendation was made to the Department of Social Protection, rather than to the HSE, on the basis that the SWA scheme at the time in question was being administered on behalf of the Department and under its general control and direction and because, in any event, the SWA scheme has always been funded through the Department's Vote. The Department accepted "that there was an unnecessary and unwarranted delay in the payment of arrears by the HSE" in the case and paid the recommended sum.

The Ombudsman's full report, 'Appeal Overruled: A failure to provide basic income for a family seeking asylum', is available on the Ombudsman's website.

"As a retired Civil Servant (Asst Principal) who had to deal with you on a number of occasions in my official capacity - I knew that you would resolve my problem"

A Complainant

Severe criticism of HSE over care of 88 years old lady in Mullingar

Ombudsman reports "unacceptable" standards in St. Mary's

An investigation by the Ombudsman Emily O'Reilly into the care and treatment of an elderly woman admitted for respite care to a HSE nursing home in Mullingar concluded that the standards of care and treatment were "unacceptable" and Ms. O'Reilly says the case is "one of a growing number of complaints received by her Office regarding care and treatment received in publicly funded healthcare agencies."

The report, issued on Monday last, December 15, related to the

care and treatment of an 88 years old woman, availing of respite care in St. Mary's Care Centre, Mullingar.

Says the report: "The complainant was the daughter of an 88 years old woman, physically and mentally incapacitated as a result of a stroke. The daughter had arranged one week's respite care for her mother in St. Mary's Care Centre, Mullingar. However, the daughter, herself a trained nurse, was extremely dissatisfied with the care her mother had received. In fact, she had taken her mother home from the nursing home after only three days when she saw what she felt was a

rapid deterioration in her mother's condition. Subsequently, in April 2006, she complained to the Ombudsman about the poor care given to her mother.

"The complainant was also unhappy with the manner in which her initial complaint to the HSE had been handled: she felt that the failure of the HSE to deal properly with her complaint added to her sense of grievance and compounded the shortcomings in the level of care provided."

"The Ombudsman's investiga-

■ CONTINUED PAGE 2

2008

20 years ago: New £5 note introduced.



CHAPTER 4

Selected
Case Studies

Chapter 4: Selected Case Studies

In this Chapter I describe just some of the complaints my Office dealt with in 2013. A number of the selected cases involve the Department of Social Protection and the HSE which reflects the large number of interactions they have with the public and the subsequent large number of complaints to my Office.

4.1 Woman incorrectly refused Invalidity Pension twice

Background

Invalidity Pension is a weekly payment for people who are permanently incapable of work because of a long-term illness or disability. In order to qualify, a person must have paid sufficient PRSI contributions and satisfy certain medical requirements, e.g. have been incapable of work for at least 12 months and be likely to be incapable of work for at least another 12 months or be permanently incapable of work. A doctor employed by the Department of Social Protection decides whether a person is medically unfit for work and qualifies on medical grounds for Invalidity Pension.

A woman made a complaint to me about the Department of Social Protection's decision to refuse her Invalidity Pension claim on the basis of insufficient credit contributions for 2003. She had been unable to work due to a permanent disability and had been in receipt of Illness Benefit for a number of years. Despite continuous efforts over a long period of time she was unable to resolve her complaint with the Department. In June 2009 she appealed the decision to the Department. The appeal was refused, however, as her right of appeal had expired.

Examination

During my examination of the Department's file I found that a medical certificate submitted for a period in 2003 had not been included in her contribution records. I brought this to the Department's attention and additional credits were applied to her 2003 contribution. As she now had sufficient credit contributions for 2003 I asked the Department to re-examine her claim for Invalidity Pension.

The Department then asked the woman to provide evidence in support of her claim that she was unable to work since May 2004. Her consultant provided a detailed medical report to the Department. The Department's Medical Assessor however found that she was not permanently incapable of work and refused her application. She appealed that decision and in January 2013 the Social Welfare Appeals Officer approved her claim for Invalidity Pension with effect from October 2011 and not the date of her original application.

Outcome

I pointed out to the Department that she had made her original application in May 2004. I requested that the Department review her claim with a view to backdating it from the earlier date. I am pleased to say that the Department agreed to my request and she subsequently received payment of arrears totalling €91,496.

4.2 Department incorrectly decided a woman was co-habiting with her friend

Background

A separated woman who was temporarily living with a male friend had her application for Jobseekers Allowance refused as the Department of Social Protection believed she was co-habiting with the man as husband and wife. The Department had taken into account the man's means when assessing the woman's eligibility.

The woman vehemently denied that she had a relationship with the man other than that of a lifelong friend who had offered her a place to stay after she separated from her husband. A Social Welfare Inspector (SWI) had visited the woman on a number of occasions and witnessed that she had a bedroom of her own in her friend's two bedroom apartment. Nevertheless, the Department refused her claim as "she had not satisfied the Department that she was not cohabiting" with the man in question.

Examination

I undertook an examination of the Department's file on the woman's application and examined the definition of a co-habiting couple.

The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 provides that:

*"... a cohabitant is one of two adults (whether of the same or the opposite sex) **who live together as a couple in an intimate and committed relationship ...**".*

The Social Welfare Consolidation Act 2005 provides that

*“A qualified parent shall not, if and so long as that parent and any person are **cohabiting as husband and wife**, be entitled to and shall be disqualified for receiving payment of one-parent family payment”.*

The Department’s operational guidelines state:

“...the onus is on the Department to satisfy the Deciding Officer that cohabitation exists.... The fact that the couple reside in a common residence is insufficient by itself to determine that they are living together as husband and wife or civil partners.

It appeared that:

- i. the Department had put the woman in the position of having to prove that she was not cohabiting with the owner of the apartment which was contrary to the Department’s guidelines and
- ii. the Department had presented no evidence that the woman was ‘cohabiting’ with the owner of the apartment, as defined by the legislation.

Consequently the means of the woman’s friend should not have been assessed as the means of the woman.

Outcome

I asked the Department to review its original decision and consider awarding the claimant Jobseekers Allowance backdated to the date of application. I am pleased to say that the Department changed its decision and awarded the woman payment for a period of almost twelve months which amounted to €25,796.00.

4.3 Woman refused Care Allowance for one of her two sons despite both having a similar condition

Background

Domiciliary Care Allowance (DCA) is a monthly payment for a child aged under 16 with a severe disability, who requires ongoing care and attention, substantially over and above the care and attention usually required by a child of the same age. The child must have a severe disability that is likely to last for at least one year.

I received a complaint from a woman who applied for DCA for her son in October 2010 but was refused. In January 2013, she applied for DCA for her older son, who has a similar condition to his brother. The woman was initially refused DCA for her older son. However, when she submitted further correspondence to the Department of Social Protection in March and April 2013, her application was referred back to the Department's Medical Examiner for review and she was awarded DCA for the older son. She was now left in a situation where she had two children with a similar condition; where one of them was regarded as being eligible for DCA, while the other son was not.

Examination

My examination of the Department's file showed that some of the medical records for her son had not been sent to a Medical Examiner for review before the appeal was heard in his case. In light of this, I wrote to the Department asking it to review all of her son's medical records.

Outcome

The Department agreed to review the case. Based on the additional information her second son was now found to be medically eligible for the allowance. The Department revised its decision and decided awarded DCA to the woman from 1 December 2011. The total amount paid to her from the Department was €12,000.

"My experience over a period of 12 months was a very positive in particular being apprised on the status of my complaint through personal contact. It is a feature of the service that is commendable. Ironically my claim for disallowed credits proved irrelevant as I had in any case sufficient stamps to ensure benefit entitlement. However it took the Office of the Ombudsman to identify and record the fact"

A Complainant

4.4 Council imposes time limit for local residency contrary to regulations

Background

A woman who lived in Laois applied to Laois County Council for social housing. The Council refused her application as she had no 'local connection' to the area. In doing so the Council said that it was applying a condition in the social housing regulations. The woman contacted the Department of Environment and Local Government. She said that the Department told her that the Council's decision was wrong and that, as she had an address within the Council area, she should be assessed for social housing. When she appealed the decision to the Council her application was again refused, this time on the grounds that she had not lived within the Council area for a period of six months or longer.

The regulations which the Council referred to - the Social Housing Assessment Regulations, 2011- provide that a person may be assessed for social housing if they satisfy one of a number of conditions, one of which states that the local authority must be the one in which the applicant 'normally resides'. The phrase 'normally resides' is not defined in the regulations and no period of time is mentioned for being resident. In this case the Council decided that it was to mean at least six months resident in the area prior to the housing application. The woman brought her complaint to my Office. I also received a similar complaint from a couple who had received a similar response from Laois County Council in relation to their housing application.

Examination

I noted that the period of six months was not set out in any legislation and was not included in the Council's Housing Allocation Scheme. I contacted a number of local authorities to find out how the regulations were being interpreted by each. It emerged that the practice varied widely. Some authorities required the applicant to have lived within the area for a specified time while others applied no such requirement.

Laois County Council did not accept that there should be no time limit. The Council said that it would continue to apply its 'six month' rule in the absence of a specific definition in the regulations or guidance from the Department of Environment and Local Government. When I contacted the Department it clarified that it was its opinion that the regulations did not allow local authorities to set such time limits.

Outcome

I asked the Department of Environment and Local Government to review the guidance material that had issued to local authorities and to clarify the application of the regulations. The Department agreed and issued a circular clarifying that a housing authority may not impose a minimum period of residence in an area prior to accepting an application for social housing.

Following this advice Laois County Council accepted that the complainants had a right to be assessed for social housing. As the six month period had elapsed both the woman and the couple were already on the housing waiting list and receiving social housing support. However, I requested that their applications for social housing be backdated to the original dates of application and the Council agreed to this. This had the benefit of improving the complainants' positions on the housing list.

4.5 Hospital apologises to family for poor treatment of woman prior to her death

Background

The two daughters of a woman who died in St Vincent's Hospital, Elm Park, Dublin contacted me to complain about the care and treatment provided to their mother prior to her death in 2008.

The woman was admitted to the A & E department of the hospital in July 2007 suffering from chest pain and shortness of breath. The woman underwent a chest x-ray which identified a mass in her left lung suggestive of lung cancer. The radiology report of the x-ray results had recommended that a CT scan be performed but this did not happen and the woman was never told that she required the scan. She was admitted at that time for cardiac concerns which were addressed and she was discharged home.

When the woman returned to the hospital in January 2008 she was made aware of the oversight in relation to the CT scan. A scan was performed at that stage and showed that the tumour had spread and was not amenable to therapy. Tissue diagnosis would have had to have been undertaken to determine what type of treatment the woman might receive but she was not fit enough to have a formal lung biopsy. The woman had been advised that she might benefit from by-pass surgery and had been weaned off medication for this purpose. It had been suggested to her daughters by the Respiratory Consultant that it might be possible to take a lung biopsy during that procedure. However, the plan to conduct by-pass surgery was cancelled once her Cardiologist returned from leave and medical treatment rather than surgery was considered the best option for the woman. Palliative radiotherapy was administered to make the woman more comfortable and she was discharged home.

In making their complaint, the daughters wanted to establish:

- i. why the CT scan was not followed up in 2007 and
- ii. why they were led to believe that by-pass surgery was a certainty rather than a mere possibility during her admission in 2008.

In addition, when their terminally ill mother was ultimately discharged home from hospital in late afternoon during December 2008 (five days before her death) they were given a prescription for her medication. This included morphine which she needed for pain. While her daughters managed to get most of her medication from her chemist, the morphine was not available until the following day. Unfortunately, their mother was in considerable pain that evening and her daughters had to contact the out of hours GP service to administer a pain relieving injection. They maintained that had they received their mother's prescription earlier in the day, they could have sourced the morphine for her without difficulty and avoided the delay in having pain relief administered to their mother.

Examination

Staff of my Office had a number of meetings with St Vincent's Hospital regarding this complaint. My Office was anxious to ascertain why no CT scan had been conducted in July 2007 in light of the radiology report. We also sought independent clinical advice in relation to the overall treatment provided to the woman.

The hospital clarified that the doctor who requests an investigation, such as an x-ray, is responsible for reviewing the result, taking any necessary action and making any necessary record. In this case, however, the woman had actually been admitted to the hospital under the care of the cardiac team, having had some diagnostic tests conducted in the A & E department. The cardiac team was not made aware that a chest x-ray had been conducted and the focus was on the woman's cardiac condition at that time. Ironically, had the woman not been admitted to the hospital but discharged home following diagnostic tests, her GP would have been notified that she required a follow up CT scan.

Having been admitted however, the emphasis of the cardiac team was on her breathing difficulties and no information about the x-ray results was brought to their attention.

Outcome

The hospital accepted the shortcomings in the hospital's process and it apologised for what had happened in the woman's case. Since then, doctors in A & E have been requested to ensure that results are directed to the admitting team and any x-ray findings suggestive of cancer are referred immediately to the Rapid Access Clinic for attention.

The Respiratory Consultant offered his apologies for the breakdown in communication which resulted in the woman being misled into believing that she was to have by-pass surgery when this was not certain. From the hospital's perspective, by-pass surgery was simply being considered and no definite decision was going to be made until the Cardiologist returned from leave.

In relation to the provision of prescriptions, the hospital said that it strives to start active discharge management and planning for patients from the time of admission. It said that it is the policy of the hospital to issue prescriptions as early as possible, whenever possible. There are guidelines around prescribing morphine and controlling drugs which the hospital undertook to reinforce in relation to patients being discharged out of hours or at weekends.

The independent clinical advice which I received suggested that the delay in diagnosing the woman's lung cancer more than likely did not impact on her survival but did result in her being deprived of the opportunity to have a discussion about the balance of risk and benefit in having potentially curative treatment. It also meant that she had less time to come to terms with her life situation. The hospital apologised unreservedly for the shortcomings associated with the woman's care. The Group CEO met with the woman's daughters, at our request, and apologised in person on behalf of hospital staff for the level of care afforded to their late mother and the poor level of communication with regard to the by-pass surgery which was most unfortunate.

4.6 Discrepancies in valuation of properties for 'Fair Deal' scheme

Background

The Nursing Homes Support Scheme (NHSS), (also known as the 'Fair Deal' scheme) provides financial support to people who need long-term nursing home care. The scheme is operated by the HSE.

Under the scheme, the applicant makes a contribution towards the cost of care and the State pays the balance. Where the applicant's assets include land and property in the State, the contribution based on such assets may be deferred.

This means that the applicant does not have to find the money to pay this contribution during their lifetime. Instead, if approved, the HSE will pay the money to the nursing home on their behalf and it will be collected after their death. This is to ensure that an applicant does not have to sell their home during their lifetime in order to finance nursing home care.

Applicants must submit a valuation of their property with their application. The HSE has the authority to undertake its own valuation at its own expense.

I received a complaint from a woman when her properties, which consisted of two adjoining houses in county Roscommon, were valued by her auctioneer at a total of €32,000, while the HSE valued them at €100,000.

Examination

The woman had appealed the decision of the HSE to its appeals office. However the appeals office had refused the appeal stating that “the HSE has a right to arrange for a valuation of the property to be assessed”.

I examined the valuations and the HSE’s file on the application. There was a significant discrepancy between the descriptions of the condition of the properties in the two valuations. I also analysed a number of property websites which indicated a difference between the market value for similar properties and the HSE’s valuation. In light of these discrepancies I asked the HSE to carry out a third valuation of the properties.

Outcome

I am pleased to say that the HSE agreed to carry out a further valuation. This new valuation valued the properties at a total of €40,000.

The HSE applied the third valuation in calculating the amount payable by the applicant under the scheme. It has meant that the weekly nursing home bills for the family have dropped from €68 to €4. Arrears of approximately €3,500 were also paid to the family.

4.7 HSE increases support under Nursing Homes Support Scheme following new evidence

Background

The daughter of an elderly woman (80) complained to my Office about the way the HSE assessed her mother’s assets and principal residence following her application for assistance under the Nursing Homes Support Scheme (Fair Deal).

While her application under the scheme was approved, the full value of her principal residence was assessed against her despite the fact that there was a large outstanding loan on the property. This outstanding loan had arisen due to the woman having applied for a small loan for the purposes of carrying out some home repairs in 2003. Her daughter had been unaware of the existence of the equity life loan which amounted to €140,000 of which the woman had only drawn down under €10,000 following home decoration. However, interest on the loan mounted up over the years adding considerably to the value of the loan which had reached €240,000 by 2011.

In appealing the HSE’s decision the woman was advised by the HSE Appeal’s Officer that the value of a principal residence can be reduced where it can be established that any outstanding loans on that property were obtained for the purchase, repair or renovation of the property. However, as the woman’s daughter was unable to provide evidence to show that the loan had been obtained for this purpose, the full value of the property was assessed.

20 years ago: Britain lifts the broadcasting ban imposed on Sinn Féin and paramilitary groups from Northern Ireland.

Examination

The woman's daughter felt unable to write a letter to the bank seeking confirmation that the loan was for home improvements as the relationship between her and the bank had deteriorated. She had experienced enormous stress dealing with the sale of her mother's property and repayment of the outstanding loan to the bank. During my examination of the case I decided to seek a copy of the original loan application from the woman's daughter which clearly showed that the purpose of the loan was for home improvements. In light of the loan application I asked the HSE to review the case.

Outcome

The outcome of the review was that the HSE accepted that the information contained in the loan application form clearly indicated the purpose of the loan. It was considered sufficient evidence to treat the outstanding balance of the loan as an allowable deduction under the scheme. The woman's contribution to her nursing home care was reduced by €31,897.

4.8 State Examinations Commission provides assistance to student at short notice

Background

On 28 May 2013 I received a complaint about a decision of the State Examinations Commission (SEC). The SEC is one of the nearly 200 public bodies that came within the Ombudsman's remit on 1 May 2013. The complaint was from a man whose son, who was due to sit the Leaving Certificate examinations, had been refused 'a reader'. A 'reader' is a person who may be supplied to candidates who have physical, visual, hearing or learning difficulties. The 'reader' reads questions from the exam papers to the candidate. The man had appealed the decision to the SEC but was not successful. The Leaving Certificate examinations were due to start on 5 June 2013.

Examination

Leaving Certificate students with Special Educational Needs who wish to apply for a 'reader' or a spelling waiver, etc. have to sit a number of tests, including standardised reading, writing and spelling tests in their school. The information is forwarded to the SEC by the school and a decision is made by the National Educational Psychology Service.

The application form used by the SEC states that a recent psychological report, standardised reading reports and a sample of continuous script of at least one A4 page in length must be submitted with the application by the student's school. In this case the school submitted a psychological report that was ten years old, brief samples of writing and, when reminded by the SEC, some standardised reading reports. However, the SEC did not request an A4 sheet of script and some other material that it said it required to make its decision on the application.

The information supplied by the school was not entirely satisfactory. However, while the SEC form states that that “the amount and quality of the evidence provided by the school greatly impacts on the speed of the decision making with regard to applications”, I took the view that the onus is on the SEC to ensure that it has sufficient information available to it to make a proper decision and in turn to explain the reasons for that decision to the applicant. In this case I was also of the view that the SEC should have contacted the school requesting the relevant information.

A standard for providing reasons for decisions by public bodies is set out in section 18 of the Freedom of Information Act. Under the Act a statement of reasons for decisions must contain:

- the reasons for the act
- any findings on any material issues of act made for the purposes of the act.

In preparing a statement of reasons, the guiding principle for the decision maker is to adequately explain to the applicant how the decision was reached.

In this case it seemed to me that the decisions made by the SEC were based on incomplete or inappropriate information.

Outcome

When I presented my view to the SEC I am pleased to say that it agreed. The SEC ensured that arrangements were made for a ‘reader’ to be available for the man’s son for the start of the examinations on 5 June 2013.

4.9 Woman with strong local connections refused social welfare payment as she was not ‘habitually resident’

Background

In order to receive certain social welfare payments such as Job Seekers Allowance and Disability Allowance the recipient must be ‘habitually resident’ in Ireland. Factors taken into account for determining whether an individual is habitually resident include:

- having a ‘right to reside’ in the State
- the length of time spent in Ireland
- the continuity of residence
- the general nature of residence.

10 years ago: Clare O Leary becomes the first Irish woman to reach the summit of Mount Everest.

In October 2011 a woman was refused Disability Allowance by the Department of Social Protection as she did not satisfy the condition of being habitually resident in the State. On appeal to the Social Welfare Appeals Office (SWAO) she was informed that she did not satisfy a number of the qualifying conditions of habitual residence.

Examination

On examining the documentation relating to the application I noted that:

- all of the woman's immediate family were living in Ireland. Her brother and father came to Ireland in 2008 while the woman and her mother followed two years later in 2010
- the woman did not appear to have any other remaining ties with her former country of residence, i.e. no immediate family, property or shares, etc.
- she was a member of a number of different local groups including the local GAA club and a local charity.
- the woman had a long term rent agreement on her property.

After assessing the relevant guidelines and legislation, I was of the view that the woman had a strong case for being regarded as being habitually resident in the State. I asked the Social Welfare Appeals Officer to review his decision.

Outcome

I am pleased to say that the Appeals Officer revised his original decision and awarded the woman a Disability Allowance backdated to the date of her application. She received payment of arrears totalling €7,000.

4.10 Hospital waives A&E fee after clarification from the HSE

Background

In July 2013 a man made a complaint to my Office regarding a €75 hospital charge from the Mater Misericordiae University Hospital. He had been admitted to the hospital in September 2012 through the ambulance service and had provided the hospital with a letter of referral from his GP. He was triaged in the Emergency Department which determined that he was a priority case and should be transferred to the Acute Medical Assessment Unit (AMAU) of the hospital. He was admitted to the AMAU where he was examined and discharged all in the same day.

Some weeks later the man received an invoice from the hospital to pay the €75 statutory charge for his admittance to the hospital. However, the man had been led to believe by his GP that he would not incur any hospital charges if he attended the hospital with a referral letter from the GP.

Examination

The hospital stated to my Office that the charge was made in accordance with circulars from the HSE which had issued in August and September 2012.

However, the Hospital had received a memorandum from the HSE's Director of Finance on 27 May 2013 clarifying the charges. This states that patients referred to a hospital Emergency Department by a GP and subsequently transferred to an Acute Medical Assessment Unit but discharged on the same day were not liable to this statutory charge. The memorandum had been received in May 2013 - after the man's visit to the hospital but before he brought his complaint to my Office.

Outcome

The hospital believed that the charge was correct at the time it issued the invoice. However, in light of the subsequent changes to how hospitals were to apply charges in respect of Acute Medical Assessment Units it decided to cancel the charge levied on the man.

Complaints to ombudsman increase by 8%

Rise is due to downturn, says O'Reilly

STEVEN CARROLL
THE NUMBER of complaints received by the Office of the Ombudsman increased by 8 per cent last year to the highest level for more than a decade, according to its annual report.

Problems with the Civil Service, Health Service Executive (HSE) and local authorities were the primary sources of the 2,787 complaints received, of which more than 30 per cent, 821, were not upheld.

The 8 per cent growth in complaints, which followed a 14 per cent increase in 2007, was not necessarily a reflection on a worsening public service, Ombudsman Emily O'Reilly said.

Rather, it was down to the rise in the numbers accessing social welfare services, supplementary income benefits and medical cards because of the recession, as well as a growing knowledge among citizens of how to complain about problems with the public service.

"The increase is mainly down to the economic downturn," Ms O'Reilly said.

ices, websites and information are accessible to people with all types of disabilities.

"We only got six complaints, and in the year before that I only got three, so either everything is absolutely perfect, which I somewhat doubt, or else there is something going on," she said.

Ms O'Reilly said a survey found that just 20 of 105 public bodies covered by the Act had information on their website about contacting their access officers.

"To me that is not just a legal failure, because there is a legal obligation on public bodies to do this, but there is also a moral and ethical failure because it seemed to me that, I don't know but people might suggest, that it is because they simply don't think it is important enough."

In response to the problem, she could name and shame the bodies not fulfilling their obligations and report them to the Houses of the Oireachtas.

Ms O'Reilly also urged the HSE to ensure that it was consistent in how it handled applications for

made to the Office of the Ombudsman last year fell outside its jurisdiction.

Last year, the office completed 2,701 cases, a 7 per cent increase on the 2,520 recorded in 2007 and 1,040 cases were carried forward to this year.

Of these, assistance was provided in 26.2 per cent, 23 per cent were discontinued, 16 per cent were resolved and 2.6 per cent were withdrawn.

A total of 686 complaints originated in Co Dublin, followed by 283 in Co Cork, while only 17 complaints came from Co Leitrim.

A total of 559 complaints was made against the Department of Social and Family Affairs, of which 31.3 per cent related to child benefit and 19.5 per cent to old-age pensions.

Ms O'Reilly said each decision made by her office not only helped the individual concerned, but helped other public bodies to learn from the mistake and improve their own services.

2008

4.11 Delay in processing forest roads grant costs man

Background

The Forest Roads (Grant) Scheme is an annual scheme managed by the Department of Agriculture, Food and the Marine to provide funding for the construction of roads for the purpose of improving the value of the forest as well as providing access.

I received a complaint from a man who applied in March 2011 for a grant under the 2011 scheme but due to delays by the Department his grant application was not processed before the scheme was closed in December. He was given the opportunity to apply for a grant under the 2012 scheme which was approved. However he complained that the amount of the grant paid to him under the new scheme was less than what he would have received if his original application in 2011 had been approved by the Department in time. He maintained that he had suffered financially through no fault of his own.

Examination

Having examined the Department's file dealing with the man's application I had concerns about the administration of the scheme in this case. I suggested that the lengthy and unexplained delays in this case had resulted in the man's application not being approved before the decision was taken to close the scheme.

While the Department accepted there were lengthy delays in processing the application, it argued it would not have been able to fund the grant in any event as demand exceeded the budget for the scheme. The Department said that a temporary halt was placed on approvals during the final months of 2011. However, despite being aware of the possibility that some grant applications would not be approved under the 2011 scheme the Department did not notify applicants until mid-December. I was unhappy with the Department's position and believed that this man had been unfairly treated in comparison to other applicants who had received a grant under the scheme.

Outcome

The Department agreed to review this case and, in view of the particular circumstances of the case, agreed to re-assess his application on the basis of the grant rates available under the 2011 Forest Roads Scheme. I am pleased to say that following a reassessment of his application the man received a total grant payment of €8,562.

4.12 Woman receives full pension payment following a claim for a lesser amount

Background

A husband and wife made a complaint to my Office in February 2013 following the Department of Social Protection's refusal to backdate a pension payment to the date of the husband's application. The husband had been awarded the State Pension (Contributory) in November 2001. In 2006 the man's wife had been awarded a half-rate State Pension. However, in 2012 the man became aware that they had a possible entitlement to a 'Qualified Adult' payment in respect of his wife. A Qualified Adult payment is payable in respect of a person who is wholly or mainly maintained by the claimant, and is a higher payment than the half rate State Pension.

The couple notified the Department of Social Protection. The Department awarded the husband the 'Qualified Adult' payment from 31 August 2012 with a payment of the difference between the two amounts backdated for six months. The Department refused to backdate the payment to the date of the husband's original application for his State Pension as he had not indicated on his application form that he wanted to apply for a 'Qualified Adult' payment.

Examination

The Department was correct in saying the husband had not indicated on his application form that he wanted to apply for the increased payment. However, records showed that the man had provided information such as the date of his marriage and his wife's date of birth which had been verified by the Department during the processing of his application. The Department's file also showed that the wife had been allocated a PPS number in 2002 which indicated that she may have been financially dependent on her husband.

Outcome

In light of the information on file I asked the Department to review the couple's entitlement to pension payments. The Department agreed, and found that while the husband was not entitled to an increase for a Qualified Adult his wife was entitled to a full State Pension. I am pleased to say that the complaint was resolved and the woman received payment of arrears of €36,524.40.



ANNEXES

Annex A: Statistics

TABLE 1 - Totals

Complaints carried forward from 2012	676
Total Complaints within remit - received in 2013	3190
Total examinable complaints received	1800
Premature complaints within remit	1390
Total on hand for 2013	2476
Complaints completed in 2013	1859
Total Complaints carried forward to 2013	617
Complaints against public bodies outside remit & private companies etc. received in 2013	1445
Total number of Enquiries Received	11,591

TABLE 2 - Numerical and Percentage Breakdown by Sector of examinable complaints received

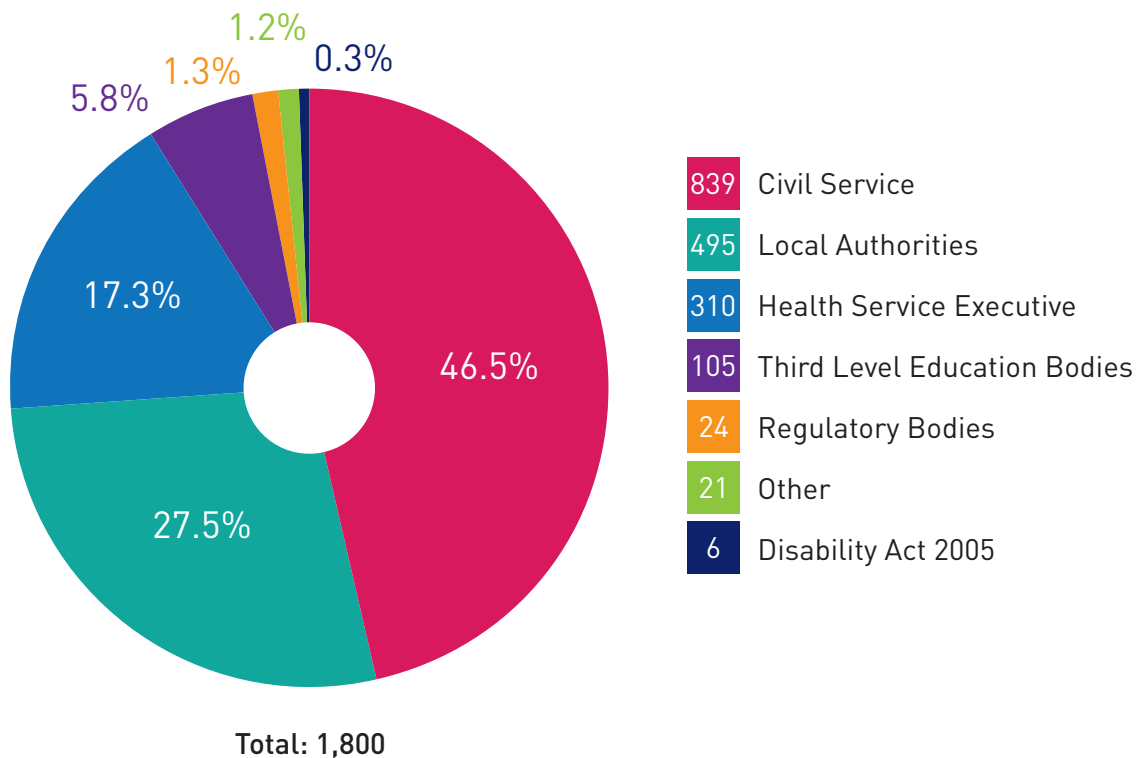


TABLE 3 - Numerical and Percentage Breakdown by complaints completed by outcome

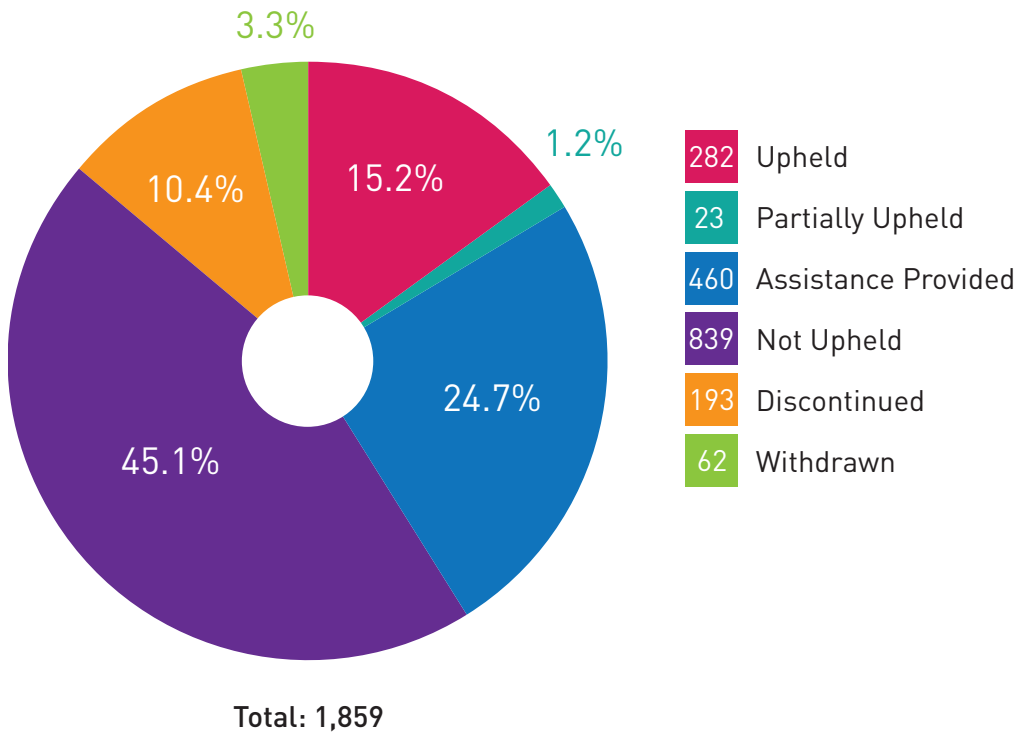


TABLE 4 - 10 Year trend of complaints received within remit

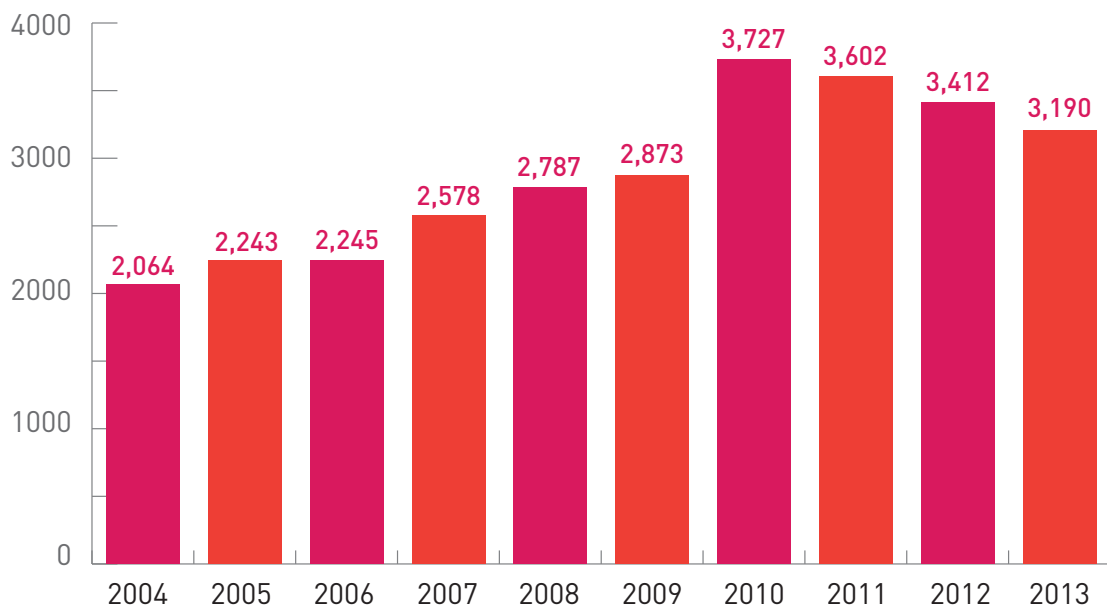
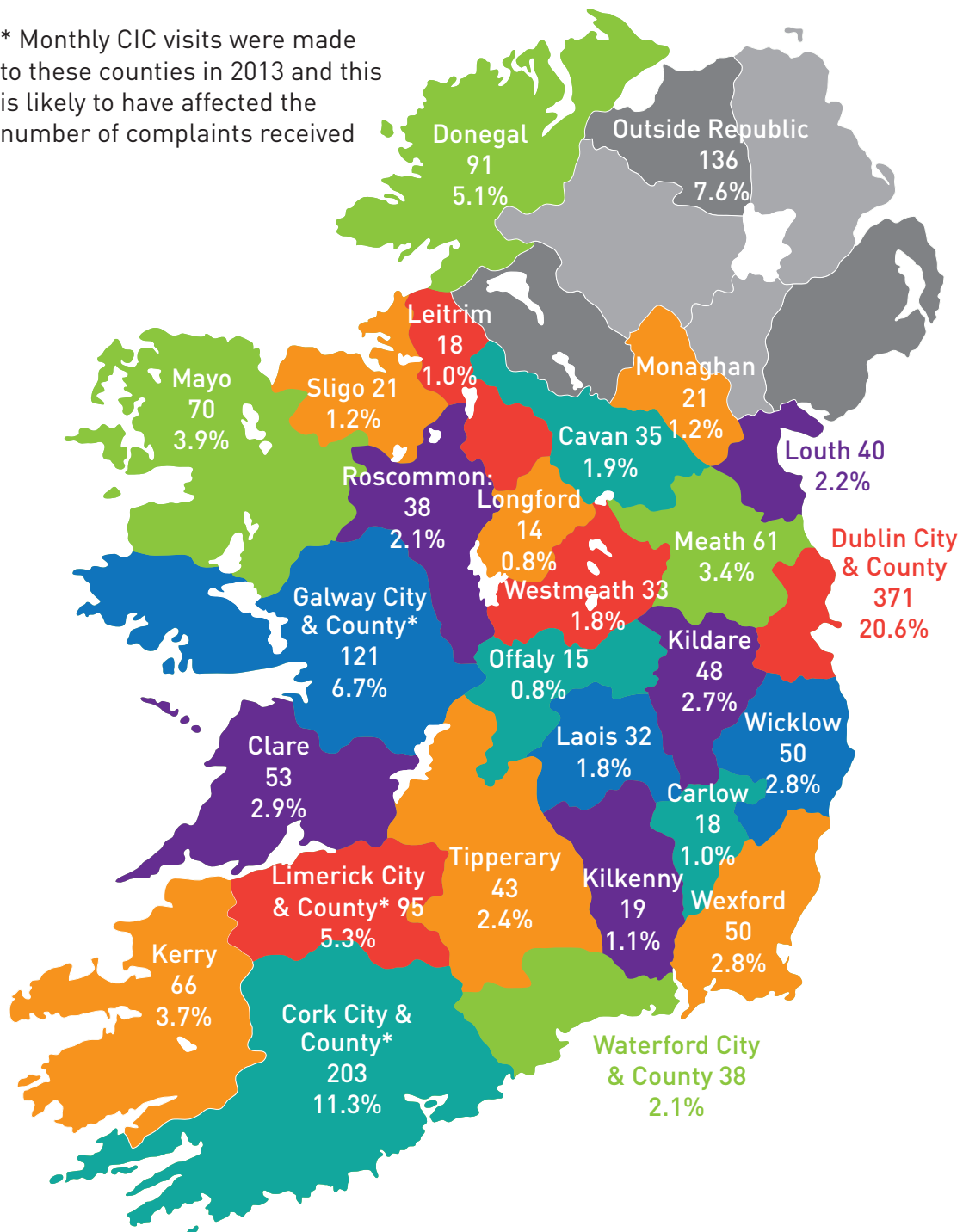


TABLE 5 - Numerical and Percentage Breakdown of examinable complaints received by County

* Monthly CIC visits were made to these counties in 2013 and this is likely to have affected the number of complaints received



Civil Service

TABLE 6 - Civil Service - Numerical breakdown of examinable complaints received by Government Departments and Revenue Commissioners	Brought forward from 2012	Examinable complaints received in 2013	On Hands for 2013
Social Protection	195	491	686
Agriculture, Food & the Marine	39	203	242
Revenue Commissioners	16	68	84
Environment, Community and Local Government	8	15	23
Justice and Equality	1	12	13
Foreign Affairs & Trade	2	8	10
Health	2	5	7
Education & Skills	6	3	9
Jobs, Enterprise and Innovation	0	2	2
Civil Service (Others)	7	32	39
Total	276	839	1115

TABLE 6(a) - Dept of Social Protection

Numerical and percentage breakdown of types of examinable complaints received in 2013

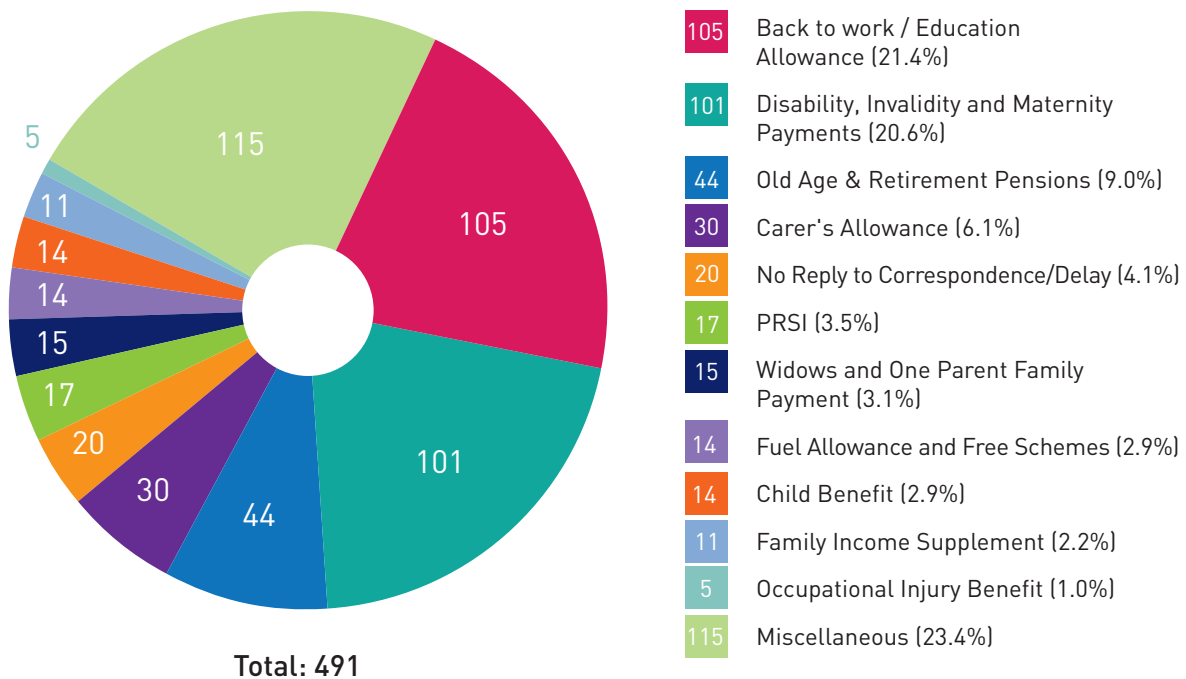
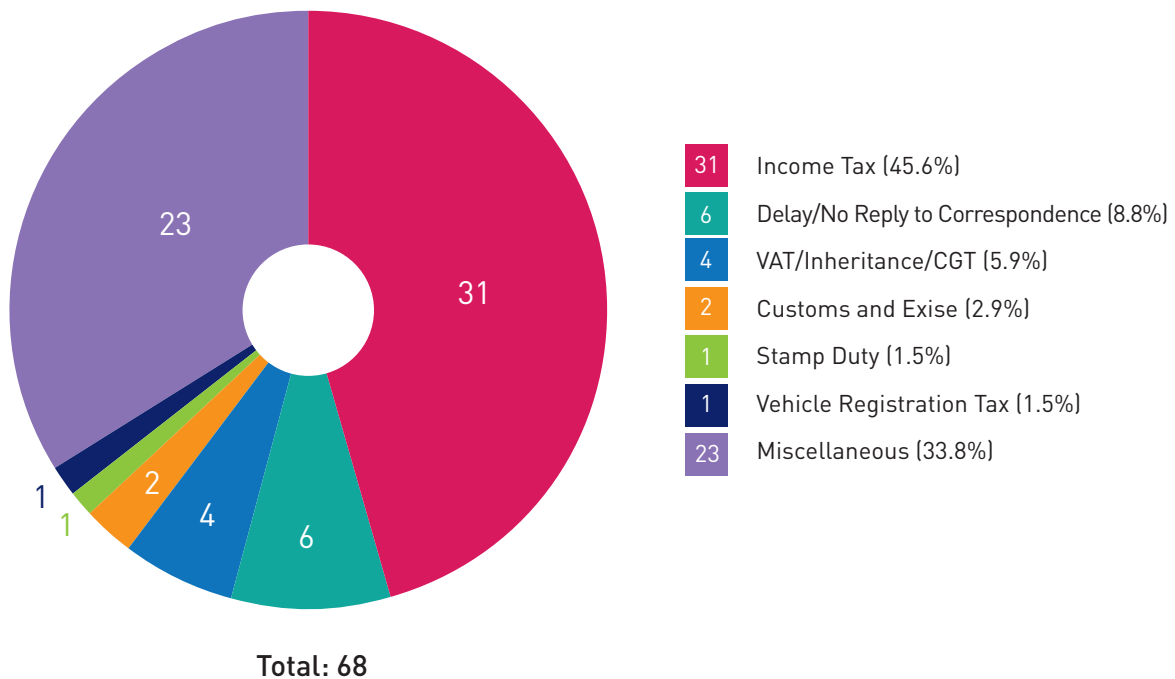


TABLE 6(b) -Office of the Revenue Commissioners

Numerical and percentage breakdown of types of examinable complaints received in 2013

**TABLE 6(c) - Dept of Agriculture, Food and the Marine**

Numerical and percentage breakdown of types of examinable complaints received in 2013

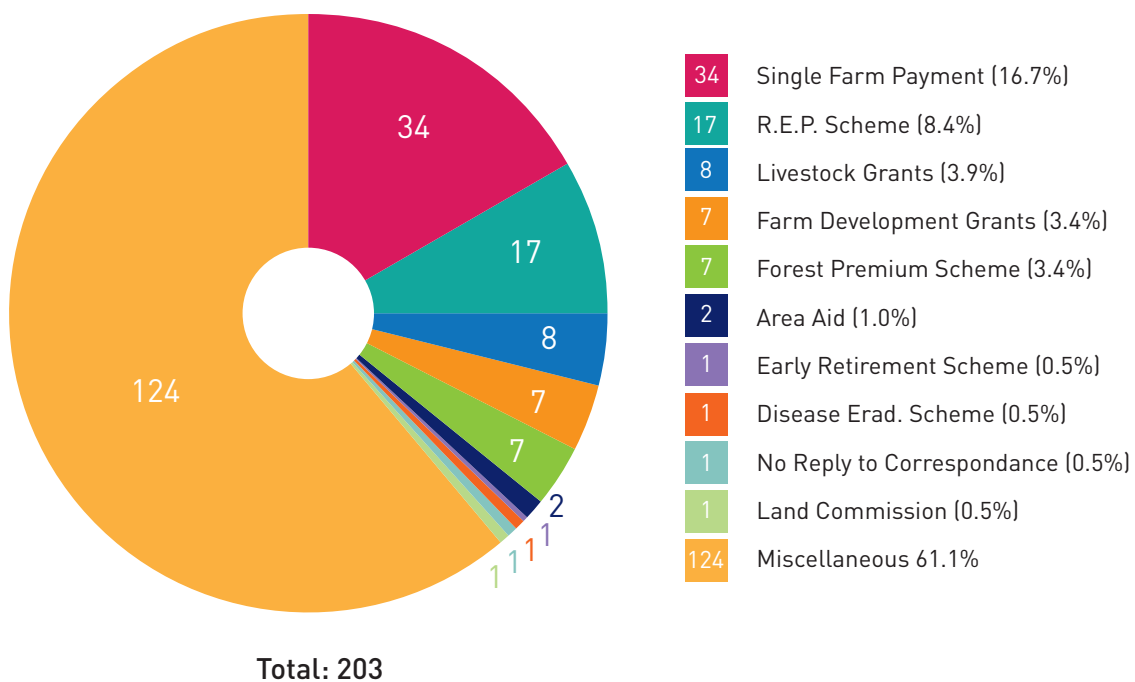


TABLE 7 - Civil Service - Numerical breakdown of complaints completed by outcome

	Upheld	Partially Upheld	Assistance Provided	Discontinued	Withdrawn	Not Upheld	Total
Social Protection	76	4	110	46	18	312	566
Justice and Equality	4	0	3	0	2	3	12
Revenue Commissioners	2	1	33	17	3	12	68
Agriculture, Food and the Marine	48	3	14	9	2	74	150
Education & Skills	0	0	0	1	0	6	7
Environment, Community & Local Government	2	0	9	2	0	4	17
Health	0	0	3	0	0	1	4
Jobs, Enterprise and Innovation	0	0	1	0	0	0	1
Foreign Affairs & Trade	0	0	3	0	1	1	5
Communication, Energy & Natural Resources	0	0	0	1	0	0	1
OPW	0	0	2	0	0	1	3
Land Registry	0	0	1	1	2	1	5
Civil Service (Others)	1	0	7	2	1	9	20
Total	133	8	186	79	29	424	859

Local Authorities

TABLE 8 - Local Authority - Numerical breakdown by Local Authority of examinable complaints received	Brought forward from 2012	Examinable complaints received in 2013	On Hands for 2013
Carlow	3	5	8
Cavan	0	3	3
Clare	6	14	20
Cork City Council.	19	26	45
Cork County	15	36	51
Donegal	10	18	28
Dublin City Council.	28	54	82
Dún Laoghaire/Rathdown	11	17	28
Fingal	5	20	25
Galway City Council.	9	16	25
Galway County	11	36	47
Kerry	12	20	32
Kildare	8	19	27
Kilkenny	2	9	11
Laois	10	14	24
Leitrim	3	3	6
Limerick City Council.	4	12	16
Limerick County	7	14	21
Longford	3	7	10
Louth	2	6	8
Mayo	9	16	25
Meath	3	12	15
Monaghan	2	4	6
North Tipperary	2	2	4
Offaly	4	5	9
Roscommon	1	11	12
Sligo	5	4	9
South Dublin	3	14	17
South Tipperary	4	14	18
Waterford City Council	2	5	7
Waterford County	1	10	11
Westmeath	4	10	14
Wexford	10	15	25
Wicklow	9	24	33
Total	227	495	722

Table 8 (a) Examinable Complaints received in 2013 by Category

Housing -Allocations and transfers	152
Planning enforcement	63
Roads/Traffic	56
No reply to correspondence/delay	43
planning Administration	43
Housing- Repairs	33
Water Supply	13
Motor tax/Driver Licence	7
Sewerage/Drainage	7
Waste Disposal	6
Housing- Rents	5
Housing -Loans and Grants	3
Rates	3
Quality of Service	2
Housing-Sales	1
Service Charges	1
Parks/open spaces	1
Provision of service	1
Miscellaneous	55
Total	495

TABLE 9 - Local Authority - Numerical breakdown of complaints completed by outcome

	Upheld	Partially Upheld	Assistance Provided	Discontinued	Withdrawn	Not Upheld	Total
Carlow	1	1	1	1	0	3	7
Cavan	0	0	1	0	0	0	1
Clare	1	0	2	1	0	7	11
Cork City Council.	6	1	9	2	0	14	32
Cork County	4	0	18	9	1	13	45
Donegal	1	2	8	6	0	8	25
Dublin City Council.	8	0	6	3	1	41	59
Dún Laoghaire/Rathdown	3	0	5	2	0	12	22
Fingal	1	0	8	2	2	8	21
Galway City Council.	2	1	7	2	0	9	21

Galway County	5	1	8	6	0	15	35
Kerry	1	1	6	1	1	7	17
Kildare	4	0	2	2	0	7	15
Kilkenny	0	0	3	2	0	3	8
Laois	3	1	4	2	0	10	20
Leitrim	2	0	0	1	0	3	6
Limerick City Council.	2	1	4	0	1	4	12
Limerick County	4	0	3	0	1	8	16
Longford	2	1	4	0	0	1	8
Louth	2	0	2	0	0	2	6
Mayo	3	0	2	2	1	10	18
Meath	2	0	2	2	0	6	12
Monaghan	1	0	0	0	0	4	5
North Tipperary	1	0	1	0	0	0	2
Offaly	0	0	2	0	1	4	7
Roscommon	2	0	1	0	0	7	10
Sligo	0	0	2	1	1	2	6
South Dublin	2	1	4	1	0	6	14
South Tipperary	1	0	10	0	1	4	16
Waterford City Council	0	0	4	0	2	1	7
Waterford County	0	0	4	0	0	4	8
Westmeath	2	0	2	1	0	4	9
Wexford	1	1	7	1	0	11	21
Wicklow	5	1	8	3	0	11	28
Total	72	13	150	53	13	249	550

HSE

TABLE 10 - HSE - Health Sector examinable complaints received in 2013 by area

	Brought forward from 2012	Examinable complaints received in 2013	On Hands for 2013
HSE : Dublin / North East	20	33	53
HSE : Dublin Mid-Leinster	24	45	69
HSE : West	33	50	83
HSE : South	25	24	49
Complaints relating to the Health Repayment Scheme	19	2	21
Hospitals	28	77	105
PCRS & GMSPB	16	78	94
Other Services Providers	1	1	2
Total	166	310	476

TABLE 11 - HSE - Health Sector complaints closed in 2013 by area

	Upheld	Partially Upheld	Assistance Provided	Discontinued	Withdrawn	Not Upheld	Total
HSE : Dublin / North East	6	0	15	10	1	15	47
HSE : Dublin Mid-Leinster	7	0	14	7	0	17	45
HSE : West	11	0	11	9	2	27	60
HSE : South	3	0	14	2	2	14	35
Complaints relating to the Health Repayment Scheme	1	0	0	0	0	2	3
Hospitals	13	1	22	10	6	22	74
PCRS & GMSPB	7	0	14	4	2	32	59
Other Services Providers	0	0	1	0	0	0	1
Total	48	1	91	42	13	129	324

TABLE 12 - HSE - Health and social care complaints - examinable complaints received in 2013 by complaint category

	Brought forward from 2012	Examinable complaints received in 2013	On Hands for 2013
HSC-Dental Services	1	4	5
HSC- Disability Services	4	4	8
HSC- Hospitals - General	31	85	116
HSC- Hospitals -Psy	7	7	14
HSC- Nursing Homes	8	17	25
HSC- Other	1	1	2
HSC- Primary & Community Care	6	16	22
HSC - Social Work Services	12	13	25
HSC - Treatment Abroad Scheme	3	4	7
	73	151	224

TABLE 13 - HSE - Health and social care cases closed in 2013 by complaint category

	Upheld	Partially Upheld	Assistance Provided	Discontinued	Withdrawn	Not Upheld	
HSC - Dental Services	0	0	1	0	0	2	
HSC- Disability Services	2	0	1	1	0	3	
HSC- Hospitals- General	10	1	29	9	8	23	
HSC- Hospitals -Psy.	1	0	2	3	0	4	
HSC- Nursing Homes	4	0	2	3	1	10	
HSC - Primary& Community Care	3	0	4	2	0	5	
HSC- Social Work Services	2	0	4	5	1	3	
HSC - Treatment Abroad Scheme	2	0	3	0	0	1	
Total	24	1	46	23	10	51	

TABLE 14 - HSE - Other Health Sector complaints - examinable complaints received in 2013 by complaints category

	Brought forward from 2012	Examinable complaints received in 2013	On Hands for 2013
HSE - Other	70	43	113
HSE - Medical & GP Card	21	78	99
No Reply to Correspondence	0	17	17
D. C. A.	0	3	3
Fees	0	3	3
Miscellaneous	0	2	2
Provision of Service	0	2	2
Social Work Services	0	2	2
Delay in Service	0	1	1
DIS - Access to Information (S.28)	0	1	1
DIS - Complaints Handling (S.38 to S.39)	0	1	1
Env. Health Services	0	1	1
Other Cash Payments	0	1	1
Recognition of Qualifications	0	1	1
Respite Care Grant	0	1	1
Total	91	157	248

TABLE 15 - HSE - Other Health Sector complaints closed in 2013 by complaint category

	Upheld	Partially Upheld	Assistance Provided	Discontinued	Withdrawn	Not Upheld	Total
HSE - Other Pay'ts	13	0	15	9	0	36	73
HSE - Medical & GP Card	8	0	14	4	3	36	65
No Reply to Correspondence	3	0	13	1	0	0	17
Miscellaneous	0	0	1	2	0	2	5
Provision of Service	0	0	0	1	0	1	2
D. C. A.	0	0	1	0	0	1	2
DIS - Access to Information (S.28)	0	0	1	0	0	0	1
DIS - Complaints Handling (S.38 to S.39)	0	0	0	1	0	0	1
Env. Health Services	0	0	1	0	0	0	1
Social Work Services	0	0	0	0	0	1	1
Total	24	0	46	18	3	77	168

TABLE 16 - Disability Act - examinable complaints received in 2013 by complaints category

	Brought forward from 2012	Examinable complaints received in 2013	On Hands for 2013
DIS - Access to Information (S.28)	1	1	2
DIS - Access to Services (S.26)	2	1	3
DIS - Accessibility of Services Provided to Public Body (S.27)	0	1	1
DIS - Complaints Handling (S.38 to S.39)	0	2	2
Miscellaneous	0	1	1
Total	3	6	9

TABLE 17 - Disability Act - complaints closed in 2013 by complaint category

	Upheld	Partially Upheld	Assistance Provided	Discontinued	Withdrawn	Not Upheld	Total
DIS - Access to Information (S.28)	0	1	0	0	0	1	2
DIS - Access to Services (S.26)	1	0	1	0	0	1	3
DIS - Complaints Handling (S.38 to S.39)	0	0	0	0	0	1	1
Miscellaneous	0	0	0	0	0	1	1
Total	1	1	1	0	0	4	7

Table 18- New Bodies - Breakdown By Body (Combined Received and Closed)

	Received	Completed	On-Hands
EDUCATION:			
Athlone Institute of Technology	1	1	0
Central Applications Office	1	1	0
County Roscommon VEC	1	1	0
Dublin City University	2	0	2
Dublin Institute of Technology	2	1	1
Dundalk Institute of Technology	1	1	0
HEAR/ DARE	7	4	3
Higher Education Authority	2	2	0
Institute of Technology Carlow	1	0	1
Institute of Technology Tralee	2	2	0
Quality and Qualifications Ireland	1	1	0
State Examinations Commission	2	1	1
Student Grant Appeals Board	7	5	2
Student Universal Support Ireland (SUSI)	69	58	11
Trinity College Dublin	2	2	0
University College Cork	1	1	0
University College Dublin	3	2	1
	105	83	22
REGULATORY:			

Adoption Authority of Ireland (*CF)	1	0	1
An Bord Altranais (*CF)	1	1	0
Equality Authority	1	1	0
Health and Safety Authority (*CF)	2	2	0
Health and Social Care Professionals Council (*CF)	1	1	0
Health Information and Quality Authority (HIQA)	1	1	0
Law Society of Ireland	3	3	0
Medical Council (*CF)	1	1	0
National Transport Authority	5	4	1
Pre-Hospital Emergency Care Council (*CF)	1	1	0
Property Services Regulatory Authority (*CF)	1	0	1
Road Safety Authority	4	1	3
Teaching Council	1	0	1
The Competition Authority	1	1	0
	24	17	7
OTHER:			
Courts Service (*CF)	4	4	0
Family Support Agency	1	1	0
Foras Áiseanna Saothair (FÁS)	2	1	1
National Treatment Purchase Fund	1	1	0
Private Residential Tenancies Board (*CF)	11	8	3
Sustainable Energy Ireland	1	1	0
Údarás na Gaeltachta	1	0	1
	21	16	5
Totals	150	116	34
*Certain Functions of these bodies are within remit			

Table 19- No. of complaints about New Bodies Completed in 2013

Upheld	28
Partially Upheld	0
Assistance Provided	31
Discontinued	19
Withdrawn	7
Not Upheld	31
Total	116

Annex B: Indicative list of additional public bodies under remit from 1 May 2013

The Ombudsman (Amendment) Act 2012 does not specify the public bodies that are within the Ombudsman's remit. The following is a list of all the significant public bodies whose actions came within the Ombudsman's remit from 1 May 2013.

Agencies marked with ^{CF} are within remit insofar as certain functions apply as specified by Part II of the First Schedule of the Ombudsman (Amendment) Act, 2012 – see <http://www.oireachtas.ie/documents/bills28/acts/2012/a3812d.pdf>

Agencies marked with ^{NS} are North/South bodies which are under the Ombudsman's remit in so far as actions taken in the Republic of Ireland by or on behalf of one of the bodies.

1. Adoption Authority of Ireland^{CF}
2. Affordable Homes Partnership
3. An Bord Altranais^{CF}
4. An Bord Bia
5. An Bord Iascaigh Mhara
6. An Foras Teanga^{NS}
7. Appeal Commissioners of Income Tax
8. Aquaculture Licence Appeals Board
9. Arts Council
10. Athlone Institute of Technology
11. Bord na Radharcmhastóirí (Optician's Board)^{CF}
12. CEBs (City and County Enterprise Boards)
13. Censorship of Films Appeal Board
14. Censorship of Publications Appeal Board
15. Censorship of Publications Board
16. Central Applications Office
17. Chomhairle um Oideachais Gaeltachta agus Gaelscolaíochta
18. Church of Ireland College of Education
19. Citizens Information Board
20. City of Cork VEC
21. City of Dublin VEC
22. City of Galway VEC
23. City of Limerick VEC
24. City of Waterford VEC
25. Coláiste Mhuire, Marino

26. Competition Authority
27. Cork Institute of Technology
28. County Carlow VEC
29. County Cavan VEC
30. County Clare VEC
31. County Cork VEC
32. County Donegal VEC
33. County Dublin VEC
34. County Galway VEC
35. County Kildare VEC
36. County Kilkenny VEC
37. County Laois VEC
38. County Leitrim VEC
39. County Limerick VEC
40. County Longford VEC
41. County Louth VEC
42. County Mayo VEC
43. County Meath VEC
44. County Monaghan VEC
45. County Offaly VEC
46. County Roscommon VEC
47. County Sligo VEC
48. County Waterford VEC
49. County Westmeath VEC
50. County Wexford VEC
51. County Wicklow VEC
52. Courts Service^{CF}
53. Crawford Gallery
54. Credit Review Office
55. Credit Union Restructuring Board
56. Dental Council^{CF}
57. Dental Health Foundation
58. Designated Area Appeals Advisory Board
59. Digital Hub Development Agency
60. Disabled Drivers Medical Board of Appeal
61. Dormant Accounts Board
62. Dublin City University
63. Dublin Docklands Development Authority
64. Dublin Institute of Advanced Studies
65. Dublin Institute of Technology
66. Dun Laoghaire Institute of Art, Design and Technology
67. Dún Laoghaire VEC
68. Dundalk Institute of Technology

69. Economic and Social Research Institute
70. Enterprise Ireland
71. Equality Authority
72. Family Support Agency
73. Food Safety Authority of Ireland
74. Foras Áiseanna Saothair (FÁS)
75. Forensic Science Laboratory
76. Forfás
77. Foyle, Carlingford and Irish Lights Commission^{NS}
78. Froebel College of Education
79. Galway-Mayo Institute of Technology
80. Grangegorman Development Agency
81. Health and Safety Authority^{CF}
82. Health and Social Care Professionals Council^{CF}
83. Health Information and Quality Authority (HIQA)
84. Health Protection Surveillance Centre
85. Health Research Board
86. Heritage Council
87. Higher Education Authority
88. Housing Agency
89. Industrial Development Authority
90. Inland Fisheries Ireland
91. Institute of Public Administration
92. Institute of Technology Blanchardstown
93. Institute of Technology Carlow
94. Institute of Technology Sligo
95. Institute of Technology Tallaght
96. Institute of Technology Tralee
97. Inter Trade Ireland^{NS}
98. Irish Blood Transfusion Service
99. Irish Expert Body on Fluorides and Health
100. Irish Film Classification Office
101. Irish Medicines Board
102. Irish Museum of Modern Art
103. Irish Red Cross
104. Irish Sports Council
105. Irish Takeover Panel
106. Irish Vocational Education Association
107. Irish Water Safety
108. Kerry Education Service (County Kerry VEC)
109. Law Society of Ireland
110. Léargas — The Exchange Bureau
111. Legal Aid Board^{CF}

112. Letterkenny Institute of Technology
113. Limerick Institute of Technology
114. Local Government Management Agency
115. Marine Institute
116. Mary Immaculate College
117. Mater Dei Institute of Education
118. Medical Council^{CF}
119. Milltown Institute
120. National Cancer Registry
121. National Centre for Guidance in Education
122. National College of Art and Design
123. National College of Ireland
124. National Consumer Agency
125. National Council for Curriculum and Assessment
126. National Council for Special Education
127. National Educational Welfare Board
128. National Gallery
129. National Milk Agency
130. National Paediatric Hospital Development Board
131. National Roads Authority
132. National Sports Campus Development Authority
133. National Standards Authority of Ireland
134. National Statistics Board
135. National Transport Authority
136. National Treatment Purchase Fund
137. National University of Ireland
138. National University of Ireland Galway
139. National University of Ireland Maynooth
140. North Tipperary VEC
141. Ordnance Survey Ireland
142. Pensions Board
143. Personal Injuries Assessment Board^{CF}
144. Pharmaceutical Society of Ireland^{CF}
145. Placenames Commission – An Chomisiúin Logainmneacha
146. Pobal
147. Pre-Hospital Emergency Care Council^{CF}
148. Private Residential Tenancies Board^{CF}
149. Property Services Appeal Board^{CF}
150. Property Services Regulatory Authority^{CF}
151. Quality and Qualifications Ireland
152. Radiological Protection Institute of Ireland^{CF}
153. Railway Safety Commission
154. Residential Institutions Statutory Fund Board

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155. Road Safety Authority
 156. Royal College of Surgeons in Ireland
 157. Royal Institute of Architects
 158. Royal Irish Academy
 159. Royal Irish Academy of Music
 160. Safefood^{NS}
 161. Science Foundation Ireland
 162. Sea Fisheries Protection Authority
 163. Shannon College of Hotel Management
 164. Shannon Development
 165. Skillnets
 166. Society of Chartered Surveyors
 167. South Tipperary VEC
 168. Special European Union Programmes Body^{NS}
 169. St. Angela's College, Sligo
 170. St. Patrick's College, Drumcondra
 171. State Examinations Commission
 172. Student Grant Appeals Board
 173. Student Universal Support Ireland (SUSI)
 174. Sustainable Energy Ireland
 175. Teaching Council
 176. Teagasc
 177. Tipperary Institute
 178. Tourism Ireland^{NS}
 179. Trinity College Dublin
 180. Údarás na Gaeltachta
 181. University College Cork
 182. University College Dublin
 183. University of Limerick
 184. Veterinary Council of Ireland^{CF}
 185. Waterford Institute of Technology
 186. Waterways Ireland^{NS}
 187. Western Development Commission

Annex C: Ombudsman engagements

Meetings with dignitaries, officials, etc

Emily O'Reilly - January to October 2013

16 January	Meeting with Mr Kieran Fitzgerald, Garda Síochána Ombudsman Commissioner
17 January	Meeting of the Health Service Ombudsmen
18 January	Meeting of the Public Sector Ombudsmen Network
28 January	Meeting with Mr Thomas Nader, Austrian Ambassador
5 February	Meeting with Joint Committee on Public Service Oversight and Petitions
18 February	Meeting with staff from European Ombudsman Office
20 March	Meeting with Mr Tom Frawley, Ombudsman for Northern Ireland
23 May	Meeting with Ms Emily Logan, Ombudsman for Children
23 May	Meeting with Dr Rafael Ribó, Regional Ombudsman of Catalonia
5 June	Appearance before Joint Committee on Finance, Public Expenditure and Reform
16 July	Meeting with Minister Howlin, Department of Public Expenditure and Reform
18 July	Meeting with Mr Niels Pultz, Danish Ambassador
18 September	Meeting with Mr Nikiforos Diamandouros, European Ombudsman
26 September	Meeting with Joint Committee on Public Service Oversight and Petitions

Peter Tyndall – December 2013

9 December	Meeting with Mr Tom Frawley, Ombudsman for Northern Ireland and Mr Jim Martin, Ombudsman for Scotland
10 December	Attended Public Administration Select Committee, Westminster, London
17 December	Meeting with Mr Pádraig MacLochlainn TD, Chairman of Oireachtas Committee on Public Service Oversight and Petitions
19 December	Meeting with Ms Emily Logan, Ombudsman for Children

Conferences at home and abroad

Emily O'Reilly - January to October 2013

21 February	Address on "The National Ombudsman in Europe" at Dublin Business School
4 March	Address on "The Role of the Ombudsman" at the Dublin Institute of Technology
7 March	Address on "A Third Way for the Third Age" at Buswells Hotel to Third Age
25 April	Bernadette McNally, Director General, address on "Rights and Entitlements of Older People: An Ombudsman Perspective" at the Older and Bolder Conference in Croke Park, Dublin
8 May	Bernadette McNally, Director General, address on "Leadership and Management Development" at the Royal College of Surgeons, Dublin
4 June	David Nutley, Senior Investigator, address at World Elder Abuse Awareness Day at University College Dublin
14 June	Bernadette McNally, the Director General, address on "The Role of the Ombudsman in Health and Social Care" at the University of Limerick Hospital
23-24 June	Bernadette McNally, the Director General, address on "Caring: Returning to the Heart of Healthcare" at the Mater Misericordiae University Hospital
28 July	Address on "Looking to 2016 – How stands the Republic?" at the 13th Annual John Hume Lecture at the MacGill Summer School, Glenties, Donegal
18 September	Address on "Serving the Citizen: The Role of the Administration" at the Ninth National Seminar of the European Network of Ombudsman, Dublin

Annex D: Annual Energy Efficiency Report 2013

Monthly Energy Report		OPW - Office of Public Works Office of the Ombudsman	
Dec 2013			
Summary			
Month to month			
<p>Energy usage has decreased by -22.0% from 58,955kWh in Dec 2010 to 45,999kWh in Dec 2013. As a result CO2 emissions for this period have decreased by -17.0% from 19,886kg to 16,507kg, (-3,379Kg).</p>			
Annual			
<p>The base year used for all these calculations is 2010.</p> <p>Compared to this base year, energy consumption on site has decreased by -48,105kWh or -10.4% over the last 12 months.</p> <p>In terms of total CO2, production has decreased by -12.1%, since 2010 or by -24,953Kg</p> <p>Normalised for weather variations, CO2 has decreased by -8.3%, since 2010 or by -17,132Kg</p>			
Energy use - Dec 2013			
Description	Electricity	Gas	Total
Benchmark Year	284,062	179,086	463,148
Previous 12 months	245,683	169,360	415,043
% Difference	-13.5%	-5.4%	